

EXECUTION COPY

POWER PURCHASE AGREEMENT

BETWEEN

**BIG BROWN POWER COMPANY LLC,
OAK GROVE MANAGEMENT COMPANY LLC,
LUMINANT GENERATION COMPANY LLC**

AND

CITIES AGGREGATION POWER PROJECT, INC.

HAVING AN EFFECTIVE DATE OF SEPTEMBER 10, 2008

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POWER PURCHASE AGREEMENT

This Power Purchase Agreement, is executed on the date set opposite each signature below, effective, however, on September 10, 2008 ("*Effective Date*"), by and between **Cities Aggregation Power Project, Inc.** ("*Buyer*"), a political subdivision corporation incorporated in the State of Texas, **Big Brown Power Company LLC**, a limited liability company organized and existing under the laws of the State of Texas ("*Big Brown*"), **Luminant Generation Company LLC**, a limited liability company organized and existing under the laws of the State of Texas ("*Luminant Generation*"), **Oak Grove Management Company LLC**, a limited liability company organized and existing under the laws of the State of Texas ("*Oak Grove*"). Seller, as defined below, and Buyer are collectively called the "*Parties*", and singularly as a "*Party*." Big Brown, Luminant Generation, and Oak Grove are collectively called the "*Facility Owners*".

RECITALS

1. WHEREAS, Seller desires to sell to Buyer and Buyer desires to purchase from Seller the Products (as defined below), on the terms and conditions set forth herein;

2. WHEREAS, Seller desires to sell the Products to Buyer from the Martin Lake Facility and the Big Brown Facility on the Service Commencement Date and, upon COD of Oak Grove Unit 1, Seller desires to sell from the Martin Lake Facility, the Big Brown Facility and Oak Grove Unit 1. Upon COD of Oak Grove Unit 2, Seller desires to sell the Products from the Martin Lake Facility, the Big Brown Facility and the Oak Grove Facility, all on the terms and conditions set forth herein (the Martin Lake Facility, Big Brown Facility, and the Oak Grove Facility being collectively referred to herein as the "*Facilities*"); and

3. NOW THEREFORE, in consideration of the foregoing, the mutual agreements set forth herein and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged and confessed, Seller and Buyer agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Definitions. The capitalized terms in this Agreement shall have the meaning set forth below. In the event a capitalized term is not defined herein, such capitalized term shall have the meaning set forth in the ERCOT Guides or rules, regulations or statutes of the state of Texas.

"*Accession Agreement*" has the meaning set forth in the Intercreditor Agreement. A copy of the Accession Agreement to be used in this Agreement is attached hereto as Exhibit "4" hereto and incorporated by this reference herein for all purposes.

"*Additional Capacity*" has the meaning set forth in Section 3.1(b).

"*Additional Energy*" has the meaning set forth in Section 3.1(b).

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"Affiliate" shall mean, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under direct or indirect common control with such Person. A Person shall be deemed to control another Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise. The terms "controlling" and "controlled" shall have meanings correlative thereto.

"Agreement" means this document and all related exhibits attached hereto, as same may be amended from time to time by the mutual agreement of the Parties.

"Alternate Energy" means Energy produced from any source other than from the Facilities as set forth in this Agreement that: (i) is scheduled in accordance with the ERCOT Guides; and (ii) is delivered by Seller to Buyer at one or more of the Delivery Points. Unless Seller receives prior authorization from Buyer or its QSE, Alternate Energy shall not exceed during any Settlement Interval an amount measured in MWhs greater than Buyer's allocation of a Facility's Net Rated Capacity divided by the number of Settlement Intervals within the hour at the Delivery Point(s) for that Facility as outlined in Section 4.2(e) and as required under Section 5.3.

"Associated Party" means, with respect to any Party, any Affiliate of such Party, and any officer, director, trustee, fiduciary, employee, agent, attorney or representative of such Party, provided that same are acting within the scope of their authority and, in the case of employees, in the course of their employment.

"Availability Plan" has the meaning set forth in Section 5.1.

"Bankrupt" means a Party, or Guarantor: (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced and regardless of whether the bankruptcy or insolvency is voluntary or involuntary), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

"Baseload Units" shall mean the Big Brown Facility, the Oak Grove Facility, the Monticello facility located near Monticello, Texas, the Martin Lake Facility, the Sandow facility located in Rockdale, Texas and the Comanche Peak nuclear facility located near Glen Rose, Texas.

"Big Brown Facility" means Unit 1 and Unit 2 of the Big Brown generating station located in Freestone County, Texas with an approximate cumulative Net Rated Capacity of 1203 megawatts as of the Effective Date.

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"Bonds" has the meaning set forth in Section 11.1(c).

"Business Day" means any Day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. CPT.

"Buyer" has the meaning set forth in the introductory paragraph of this Agreement.

"Buyer's Loss" has the meaning set forth in Article 12.

"Buyer Termination Payment" has the meaning set forth in Article 12.

"Capacity Prepayment" has the meaning set forth in Section 4.1(b).

"Capitalization Rate" means the ten (10) year Treasury rate plus 400 basis points.

"Carbon Remediation" shall mean the process of removing Greenhouse Gasses from, or preventing the emission of Greenhouse Gasses into, air and/or water.

"Code" means Texas Local Government Code, Title 8, Chapter 271, Subchapter I, Sections 271.151 through 271.160.

"COD of Oak Grove Unit 1" means the first commercial operation date of Oak Grove Unit 1, being the date on which ERCOT accepts Oak Grove Unit 1 for its dispatch control.

"COD of Oak Grove Unit 2" means the first commercial operation date of Oak Grove Unit 2, being the date on which ERCOT accepts Oak Grove Unit 2 for its dispatch control.

"Collateral" shall have the meaning set forth in the Credit Agreement.

"Collateral Threshold" means the amount set forth on the table below opposite the higher of the Credit Rating for Guarantor.

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<u>Threshold</u>	<u>S&P</u>	<u>Moody's</u>
\$70,000,000	AAA	Aaa
\$70,000,000	AA+, AA, AA-	Aa1, Aa2, Aa3
\$70,000,000	A+, A, A-	A1, A2, A3
\$60,000,000	BBB+	Baa1
\$36,000,000	BBB	Baa2
\$25,000,000	BBB-	Baa3
\$9,000,000	BB+	Ba1
\$5,000,000	BB	Ba2
\$2,000,000	BB-	Ba3
\$2,000,000	B+	B1
\$1,000,000	B	B2
\$0	B- or Below or Unrated	B3 or Below or Unrated

“Contract Capacity” means 150 megawatts.

“Contract Energy” means (i) the Unit Contingent Energy associated with the Contract Capacity, which is scheduled and ratably delivered to Buyer at the Delivery Points throughout the applicable Settlement Interval during the Term plus (ii) any Alternate Energy, if delivered in Seller’s sole discretion except as required to be delivered pursuant to Section 5.3 delivered to Buyer; provided, however, if in any Settlement Interval the output of one or more of the Facilities is less than the Net Rated Capacity due solely to Planned Outage or Forced Outage for such Facility, Buyer shall receive a share of such actual output from the affected Facility equal to, at a minimum, the product of such actual output and the Minimum Allocation Percentage then applicable to such Facility under Section 4.2(c) below. Unless Seller receives prior authorization from Buyer or its QSE, Contract Energy shall not exceed during any Settlement Interval an amount measured in MWhs greater than the Contract Capacity divided by the number of Settlement Intervals within that hour.

“Costs” means, with respect to the non-defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by the non-defaulting Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the terminated Agreement; and all reasonable attorneys’ fees and expenses incurred by the non-defaulting Party in connection with the termination of this Agreement.

“Covered Contract” means a “Contract subject to this subchapter,” as such phrase is defined in Section 271.151(2) of the Code.

“CPT” means central prevailing time.

“Credit Agreement” means that certain Credit Agreement, dated as of October 10, 2007, among Energy Future Competitive Holdings Company, a Texas corporation (“US Holdings”), Texas Competitive Electric Holdings Company LLC, a Delaware limited

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liability company ("TCEH" or the "Borrower"), the lending institutions from time to time parties thereto (each a "Lender" and, collectively, the "Lenders"), Citibank, N.A., as Administrative Agent, Collateral Agent, Swingline Lender, Revolving Letter of Credit Issuer and Deposit Letter of Credit Issuer, Goldman Sachs Credit Partners L.P., as Posting Agent, Posting Syndication Agent and Posting Documentation Agent, JPMorgan Chase Bank, N.A., as Syndication Agent and Revolving Letter of Credit Issuer, Citigroup Global Markets Inc., J.P. Morgan Securities Inc., Goldman Sachs Credit Partners L.P., Lehman Brothers Inc., Morgan Stanley Senior Funding, Inc. and Credit Suisse Securities (USA) LLC, as Joint Lead Arrangers and Bookrunners, Goldman Sachs Credit Partners L.P., as Posting Lead Arranger and Sole Bookrunner, Credit Suisse, Goldman Sachs Credit Partners L.P., Lehman Commercial Paper Inc. and Morgan Stanley Senior Funding, Inc., as Co-Documentation Agents, and J. Aron & Company, as Posting Calculation Agent.

"Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P, Moody's or any other rating agency agreed by the Parties.

"Day" means the consecutive twenty-four (24) hour period beginning at 12:00:01 a.m. CPT on any calendar day and ending at 12:00:00 p.m. CPT on such calendar day.

"Default" has the meaning set forth in Section 10.1 hereof with respect to Seller Default, and the meaning set forth in Section 10.3 hereof respect to Buyer Default.

"Delivery Month" means the period beginning at 12:01 a.m. CPT on the first Day of a calendar month and ending at 12:01 a.m. CPT on the first Day of the next succeeding month.

"Delivery Point" means the point at a Facility at which Contract Energy is capable of being injected for the credit of the Buyer into the ERCOT high voltage transmission system with Buyer being fully responsible for any charges or assessments by ERCOT related to delivery of energy from the Plant Bus or Plant Bus(es) into the ERCOT high voltage transmission system.

"Disclosing Party" has the meaning set forth in Section 17.1 hereof.

"Discount Rate" shall mean the Treasury Rate plus the greater of (i) 12.5 basis points or (ii) as otherwise set forth in the Bonds.

"Early Termination Date" has the meaning set forth in Article 12 hereof.

"Effective Date" has the meaning set forth in the preamble of this Agreement.

"Emergency Condition" has the meaning set forth in the ERCOT Guides.

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"Energy" means electrical energy expressed in MWh of the character commonly known as three (3) phase, sixty (60) hertz electric energy.

"Energy Trade" has the meaning set forth in the ERCOT Guides.

"Environmental Entitlements" shall mean, as attributable to a Facility, an explicit, governmentally-conveyed right to emit effluents, or subsidy reducing the economic ramifications of emitting effluents, resulting from the generation of electricity, or handling or transportation of fuel prior to, or disposal of byproducts resulting from, the generation of electricity.

"ERCOT" means the Electric Reliability Council of Texas or its successor in function.

"ERCOT Barred Issue" has the meaning set forth in Section 8.5.

"ERCOT Guides" means the then-current ERCOT Operating Guides, Market Guides, Protocols, Nodal Protocols, Transaction Guides, and/or ISO procedures, as they may be amended from time to time.

"Equivalent Availability Factor-Contract" has the meaning set forth in Section 4.2(c).

"Equivalent Availability Factor-Facility" has the meaning set forth in Section 4.2(c).

"Expected Monthly Quantity(s)" has the meaning set forth on Exhibit "1".

"Facilities" has the meaning set forth in the recitals of this Agreement, including, with respect to each, all land, structures, fixtures, equipment, machinery, lignite, and all related auxiliary equipment required to operate each such Facility.

"FERC" means the Federal Energy Regulatory Commission or any successor thereto.

"Financing Parties" means one or more Persons providing debt or equity financing in connection with the construction, ownership, operation or maintenance of the Facility or Facilities, or any part thereof.

"First Lien" has the meaning specified in the Intercreditor Agreement.

"Floor Amount" has the meaning set forth in the Intercreditor Agreement.

"Force Majeure" has the meaning set forth in Article 14 below.

"Forced Outage" means an interruption of a Unit's generating capability which is not the result of (i) Planned Outage; (ii) an event or occurrence of Force Majeure; (iii) a breach of this Agreement by Buyer (including Seller's exercise of its remedies under Section

10.4); or (iv) an instruction from ERCOT or an interruption in transmission by the Transmission Service Provider on Buyer's side of the Delivery Point.

"Governmental Authority" means any nation, state, sovereign, or government, any federal, regional, state, local or political subdivision thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any of the foregoing that has jurisdiction over the Facility or Facilities and the delivery of Energy under this Agreement and any reliability organization with oversight in the ERCOT market, including, but not limited to, ERCOT.

"Governmental Charges" means taxes (other than income taxes, margin taxes, employment taxes and ad valorem taxes), assessments or other governmental impositions or costs of compliance with requirements imposed by any Government Authority affecting a Facility, on a Facility by Facility basis, specifically excluding Preexisting Environmental Commitments.

"Greenhouse Gasses" means any such gas emission as inventoried by the US Environmental Protection Agency (EPA) in the INVENTORY OF U.S. GREENHOUSE GAS EMISSIONS AND SINKS including, Carbon dioxide (CO₂), Methane (CH₄), Nitrous Oxide (N₂O), Hydrofluorocarbons (HFCs), Perfluorocarbons (PFCs) & Sulfur Hexafluoride (SF₆), or other such gas emission that the EPA may otherwise inventory as a Greenhouse Gas Emission.

"Guarantor" means Texas Competitive Electric Holdings Company LLC, a limited liability company organized and existing under the laws of the State of Delaware.

"IMM" means the Independent Market Monitor.

"Indemnified Claims" shall have the meaning set forth in Section 13.3.

"Intercreditor Agreement" means the Collateral Agency and Intercreditor Agreement dated as of October 10, 2007, among Energy Future Competitive Holding Company, Texas Competitive Electric Holdings Company LLC, the Subsidiary Guarantors (as defined therein), Citibank, N.A., as Administrative Agent and Collateral Agent, Lehman Brothers Commodity Services Inc., J. Aron & Company, Morgan Stanley Capital Group Inc., Citigroup Energy Inc. and each other Secured Commodity Hedge Counterparty (as defined therein) from time to time a party thereto, as the same may be amended, restated, supplemented, replaced or otherwise modified from time to time.

"Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

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"Investment Grade" means a Credit Rating of BBB- and Baa3 (or their equivalents, should rating designations change) or higher by S&P or Moody's, respectively, provided, that, if the Credit Ratings by S&P and Moody's are not equivalent, then the higher of the Credit Ratings shall control for purposes of determining whether the Person's Credit Rating is Investment Grade, unless the higher of the Credit Ratings of such Person has been placed on Credit Watch with negative implications by S&P or Watchlist (DNG) by Moody's, in which event the lower rating shall control.

"Law" means (i) any law, legislation, statute, act, rule, ordinance, decree, treaty, regulation, order, judgment, or other similar legal requirement, and (ii) any legally binding announcement, directive or published practice or interpretation thereof, including but not limited to, ERCOT Guides, enacted, issued or promulgated by any Governmental Authority having jurisdiction over this Agreement, the Facility, and the delivery of Energy pursuant to this Agreement.

"Lender" has the meaning set forth in the Credit Agreement.

"Loss" has the meaning set forth in Article 12.

"Make Whole Premium" has the meaning set forth in Article 12 hereof.

"Martin Lake Facility" means Unit 1, Unit 2, and Unit 3 of the Martin Lake generating station located in Rusk County, Texas with an approximate cumulative Net Rated Capacity of 2,345 megawatts as of the Effective Date.

"Materiality Threshold" means with respect to Buyer's Prorata share of expenses, the sum of one million dollars (\$1,000,000.00) for capital expenses and one hundred thousand dollars (\$100,000.00) for annual operating expenses to be applied across all Facilities.

"Member Contract Deadline" has the meaning set forth in Section 11.1.

"Member Output Contract" means the individual output contract between Buyer and a Participating Member under which such Participating Member is acquiring a portion of the Products Buyer is acquiring under this Agreement.

"Minimum Allocation Percentage" is the percentage of the Energy physically produced at a Facility that is scheduled for delivery to Buyer at the Delivery Point of that Facility during a Settlement Interval. The Minimum Allocation Percentage of the energy that is attributable to Buyer, from time to time is set forth in Section 4.2(c).

"Moody's" means Moody's Investor Services, Inc. or its successor.

"Monthly Energy Payment" means the product of the Monthly Energy Price times the megawatt hours delivered to Buyer for the Delivery Month.

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"Monthly Energy Price" means the price per megawatt hour as set forth in Exhibit "1" for such corresponding Delivery Month prior to application of any Governmental Charges or New Governmental Charges.

"MW" means megawatt.

"MWh" means megawatt hour.

"NERC" means the North American Electric Reliability Corporation.

"Net Rated Capacity" shall be equal to the Net Dependable Capability of each Facility as periodically reported to ERCOT by Seller for the Facilities from which Seller is delivering the Product; provided, however, for the Oak Grove Facility, the Net Rated Capacity shall refer specifically to the pro rata share of the Net Dependable Capability of Seller's undivided equity interest in such Facility. Seller shall provide Buyer with written notice of each report to ERCOT made by Seller modifying or confirming a Facility's Net Dependable Capability, accompanied by any and all documentation identifying the reasons for material changes to the Net Dependable Capability of each individual unit.

"Net Dependable Capability" has the meaning set forth in the ERCOT Guides.

"New Collateral" has the meaning set forth in Section 9.2.

"New Governmental Charges" means (i) any Governmental Charges enacted and effective after the Effective Date, including without limitation, that portion of any Governmental Charges or New Governmental Charges that constitutes an increase or that cause the Facility or Facilities to incur additional or new expenses less Governmental Charges enacted or imposed prior to the Effective Date that are replaced by the New Governmental Charge, or (ii) any Law or interpretation thereof, enacted and effective after the Effective Date resulting in a new or additional expense to the Facility or the Facilities or the application of any Governmental Charges to a new or different class of parties; provided, however, that in no event shall the term "New Governmental Charges" include the cost of Preexisting Environmental Commitments. For the avoidance of doubt, New Governmental Charges shall include, without limitation, costs associated with Carbon Remediation.

"Oak Grove Facility" means Oak Grove Unit 1 and Oak Grove Unit 2 of the lignite coal-fired power generation facility known as the Oak Grove Generating Station located in Robertson County, Texas with an approximate planned cumulative Net Rated Capacity of equal to the lesser of (i) 1,654 megawatts and (ii) Seller's undivided equity interest in the Oak Grove Facility.

"Oak Grove Unit 1" means Unit 1 of the Oak Grove Generating Station with an approximate planned cumulative Net Rated Capacity of equal to the lesser of (i) 817 megawatts and (ii) Seller's undivided equity interest in Oak Grove Unit 1.

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"Oak Grove Unit 2" means Unit 2 of the Oak Grove Generating Station with an approximate planned cumulative Net Rated Capacity of equal to the lesser of (i) 837 megawatts and (ii) Seller's undivided equity interest in Oak Grove Unit 2.

"Ordered Backdown" has the meaning set forth in Section 5.2.

"Participating Member" means a member of Buyer that has entered into a Member Output Contract.

"Party" and **"Parties"** have the meaning set forth in the preamble of this Agreement, and shall include the successors and assigns thereof.

"Person" means a natural person, corporation, electric cooperative, partnership, trust, association, joint venture, real estate investment trust or business trust (including any beneficiary thereof), unincorporated association, Governmental Authority and any other form of business or legal entity.

"Planned Outage" has the meaning set forth in Section 6.1.

"Plant Bus" or "Plant Buses" means the point or points at which the 345kV bus at the units at the Martin Lake Facility, Big Brown Facility and Oak Grove Facility connect to the ERCOT transmission system.

"Preexisting Environmental Commitments" means the twenty percent (20%) reduction of NOx, SO₂ and mercury output below 2005 levels that Seller, Guarantor, or their Affiliates committed to on or before October 10, 2007 on a portfolio basis. The expense of the Preexisting Environmental Commitments shall be paid by Seller or its Affiliates, and no portion of such expense shall be charged to or payable by Buyer.

"Product" or "Products" means Contract Capacity, Contract Energy and Alternate Energy, if any.

"Prorata" means Buyer's proportionate share of Capacity in a Facility or Facilities calculated by dividing the Contract Capacity by the Net Rated Capacity of the Facilities.

"Prudent Industry Practice" means any of the spectrum of practices, methods, standards and acts engaged in or adopted by a significant portion of the electric power industry that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, could have been expected to accomplish the desired result consistent with good business practices, reliability, economy, safety and expedition, and which practices, methods, standards and acts reflect due regard for operation and maintenance standards recommended by the Facility's equipment suppliers and manufacturers, operational limits, and all then-current and then-applicable Laws. Prudent Industry Practice is not intended to be limited to the optimum practice, method, standard or act to the exclusion of all others but rather to be a spectrum of acceptable practices, methods, standards or acts.

"PUCT" means the Public Utility Commission of Texas.

"QSE" means the entity which is responsible for performing the responsibilities defined for a Qualified Scheduling Entity under the ERCOT Guides, or their successor in function.

"Receiving Party" has the meaning set forth in Section 17.1 hereof.

"Refinance", "Refinanced" and "Refinancing" has the meaning set forth in the Intercreditor Agreement or in any succeeding intercreditor agreement with respect to the New Collateral as set forth in Section 9.2.

"REP" means Retail Electric Provider as defined in the ERCOT Protocols.

"Replacement Agreement" has the meaning set forth in Article 12.

"Replacement Price" means the price at which Buyer, acting in a commercially reasonable manner, purchases at the Delivery Point(s) or, absent the ability to purchase at the Delivery Point(s) after using commercially reasonable efforts, a delivery point chosen by the Buyer in a commercially reasonable manner, a replacement for the Product not delivered by Seller, plus (i) costs reasonably incurred by Buyer in purchasing such substitute Product and (ii) additional transmission charges, if any, reasonably incurred by Buyer to the Delivery Point(s), or absent a purchase, the market price at the Delivery Point(s) for such Product not delivered as determined by Buyer in a commercially reasonable manner; provided, however, in no event shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller's liability.

"Resale Price" means the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point(s) or, absent the ability to resell at the Delivery Point(s) after using commercially reasonable efforts, a delivery point as chosen by the Seller in a commercially reasonable manner, the Product not received by Buyer, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Product, and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party purchaser, or absent a sale, the market price at the Delivery Point(s) for such Product not received as determined by Seller in a commercially reasonable manner; provided, however, in no event shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer's liability.

"S&P" means the Standard & Poor's Rating Group (a division of The McGraw-Hill Companies, Inc.) or its successor.

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"Secured Commodity Hedge and Power Sales Agreement" has the meaning specified in the Intercreditor Agreement. This Agreement is stipulated to be Secured Commodity Hedge and Power Sales Agreement.

"Secured Obligation" or **"Buyer's Secured Obligation"** is the value of this lien as calculated from time to time pursuant to Section 9.1(a).

"Security Documents" shall have the meaning set forth in the Credit Agreement.

"Seller" means Big Brown (to the extent that Contract Energy and Contract Capacity are to be provided from the Big Brown Facility as hereinafter provided), Oak Grove (to the extent that Contract Energy and Contract Capacity are to be provided from the Oak Grove Facility as hereinafter provided), and Luminant Generation (to the extent that Contract Energy and Contract Capacity are to be provided from the Martin Lake Facility as hereinafter provided), and with respect to each, their respective successors and assigns.

"Seller's Loss" has the meaning set forth in Article 12.

"Seller Representative" shall mean Luminant Generation Company LLC.

"Seller Termination Payment" has the meaning set forth in Article 12.

"Service Commencement Date" means one (1) minute before 12:01 a.m. CPT on January 1, 2009.

"Settlement Interval" has the meaning as set forth in the ERCOT Guides.

"Term" has the meaning set forth in Section 2.1(a) hereof.

"Termination Payment" has the meaning set forth in Article 12.

"Transmission Losses" means losses associated with the transmission of Energy hereunder from resources used by Seller to the Delivery Point as determined in accordance with the ERCOT Guides.

"Transmission Service Provider" shall mean, as defined in the ERCOT Protocols (both Zonal and Nodal), an entity under the jurisdiction of the PUCT that owns or operates Transmission Facilities used for the transmission of electricity and provides transmission service in the ERCOT Transmission Grid for the Facilities.

"TRE" means the Texas Regional Entity.

"Unearned Portion" means the amount calculated by taking the Capacity Prepayment divided by the number of months in the Term times the months remaining in the Term.

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"Unit" means each of the generating units at the Big Brown Facility, the Oak Grove Facility and the Martin Lake Facility.

"Unit Contingent Energy" means the Energy to be supplied by Seller to Buyer from the Facilities under the terms of this Agreement, for which non-delivery is excused to the extent that: (i) a Facility is unavailable as a result of a Forced Outage or a Planned Outage; (ii) Buyer fails to perform any of its obligations under this Agreement or one or more of its Participating Members prevents Seller from delivering the Products; or (iii) an event of Force Majeure prevents delivery of such Energy.

1.2 Principles of Interpretation. Unless the context requires otherwise, any reference in this Agreement to any document means such document and all schedules, exhibits, and attachments thereto as amended and in effect from time to time. Unless otherwise stated, any reference in this Agreement to any Person or Party includes its permitted successors and assigns and, in the case of any Governmental Authority, any Person succeeding to its functions and capacities. The words "*hereof*", "*herein*" and "*hereunder*" and words of similar import when used in this Agreement, unless otherwise expressly specified, refers to this Agreement as a whole and not to any particular provision of this Agreement. The singular includes the plural, and the masculine includes the feminine and neuter genders. Whenever the term "*including*" is used herein in connection with a listing of items included within a prior reference, such listing shall be interpreted to be illustrative only, and shall not be interpreted as a limitation on or exclusive listing of the items included within the prior reference. The language used in this Agreement is deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party. All times set forth in this Agreement shall be construed to be CPT.

ARTICLE 2 TERM; COMMERCIAL OPERATION DATE

2.1 Term of Agreement and Commencement of Service. Unless a Party shall have terminated this Agreement on or before the Member Contract Deadline as provided in Section 11.1, below, Seller shall begin providing and Buyer shall begin receiving the Products as set forth herein on the "**Service Commencement Date**", and shall terminate at one (1) minute before 12:01 a.m. (CPT) on January 1, 2033, unless earlier terminated in accordance with the terms of this Agreement ("**Term**").

2.2 Facility Status Update. Seller shall use commercially reasonable efforts to keep Buyer informed of material milestones and/or material setbacks during the construction phase of the Oak Grove Facility prior to COD of Oak Grove Unit 1 and COD of Oak Grove Unit 2.

**ARTICLE 3
PURCHASE AND SALE**

3.1 Capacity and Energy.

(a) Seller shall supply, sell and deliver the Products from the Martin Lake Facility and the Big Brown Facility on the Service Commencement Date and until the COD of Oak Grove Unit 1 as set forth herein. Upon COD of Oak Grove Unit 1, Seller shall supply, sell and deliver the Products from the Martin Lake Facility, the Big Brown Facility and Oak Grove Unit 1 until COD of Oak Grove Unit 2 as set forth herein. Upon the COD of Oak Grove Unit 2, Seller shall supply, sell and deliver the Products from the Martin Lake Facility, the Big Brown Facility and the Oak Grove Facility as set forth herein.

(b) At all times during the Term, Seller shall have the right to sell any capacity in the Facilities in excess of the Contract Capacity ("***Additional Capacity***") and/or Energy produced by the Facilities in excess of the Contract Energy ("***Additional Energy***") to a third party without Buyer's approval if Seller has not otherwise agreed to sell such Additional Capacity and/or Additional Energy to Buyer.

(c) Subject to the Laws of the State of Texas, Buyer reserves for itself and for Buyer's REP and/or QSE and Seller grants to Buyer and Buyer's REP and/or QSE the right to sell all or any portion of the Contract Energy not consumed by the Participating Members to third parties on such terms as Buyer may be able to negotiate.

3.2 Title and Risk of Loss. Title to and risk of loss of the Products provided in accordance with this Agreement shall transfer from Seller to Buyer at the Delivery Point(s). Big Brown warrants that it will deliver the Products required in this Agreement to be delivered from the Big Brown Facility to Buyer at the Delivery Point free and clear of all liens, security interests, claims, encumbrances, and adverse interests therein or thereto. Oak Grove warrants that it will deliver the Products required in this Agreement to be delivered from the Oak Grove Facility to Buyer at the Delivery Point free and clear of all liens, security interests, claims, encumbrances, and adverse interests therein or thereto. Luminant Generation warrants that it will deliver the Products required in this Agreement to be delivered from the Martin Lake Facility to Buyer at the Delivery Point free and clear of all liens, security interests, claims, encumbrances, and adverse interests therein or thereto.

3.3 Buyer Failure. If Buyer fails to schedule and/or receive all or part of the Product under this Agreement and such failure is not excused under the terms of this Agreement or by Seller's failure to perform, then Buyer shall pay Seller, on the date payment would otherwise be due with respect to the month in which the failure occurred, an amount for each MWh of such deficiency equal to the positive difference, if any, obtained by subtracting the Resale Price from the Monthly Energy Price (which such Monthly Energy Price shall include charges under Article 20). If Buyer is required to pay Seller damages under this Section 3.3, then Buyer's failure to receive and/or schedule the Energy for which the damages were paid shall be deemed to have been Energy received and/or scheduled for purposes of calculating the Equivalent Availability Factor – Contract. The invoice for such amount shall include reasonable detail as to the

calculation of such amount. Notwithstanding any provision in this Agreement, this Section 3.3, or Section 10.3(a) to the contrary, Buyer shall not be deemed to be excused from receiving the Products from Seller by the payment of damages under this Section 3.3. In no event shall Buyer be required to pay damages under this Section 3.3 in excess of the Seller's Loss.

3.4 Seller Failure. If Seller fails to schedule and/or deliver to Buyer all or part of the Product under this Agreement and such failure is not excused by the terms of this Agreement, then Seller shall pay Buyer, on the date payment would otherwise be due to Seller with respect to the month in which the failure occurred, an amount (i) for each MWh of such deficiency equal to the positive difference, if any, obtained by subtracting the Monthly Energy Price (which such Monthly Energy Price shall include charges under Article 20) from the Replacement Price. The invoice for such amount shall include reasonable detail as to the calculation of such amount. Notwithstanding any provision in this Agreement, this Section 3.4, or Section 10.1(a) to the contrary, Seller shall not be deemed to be excused from supplying and delivering the Products to Buyer by the payment of damages under this Section 3.4; provided, however, if Seller is required to pay Buyer damages under this Section 3.4, the Energy Seller failed to deliver and/or schedule for which the damages were paid shall be deemed to have been delivered and/or scheduled for purposes of calculating the Equivalent Availability Factor-Contract. For the avoidance of doubt, Seller shall not be required to pay damages under this Section 3.4 when the failure to schedule and/or deliver is excused under the definition of Unit Contingent Energy or Ordered Backdown. In no event shall Seller be required to pay damages under this Section 3.4 in excess of Buyer's Loss.

3.5 Ancillary Service Responsibility. Notwithstanding the designation of the Delivery Point of a Facility, Seller shall not be responsible for providing any Ancillary Service required by Buyer for the delivery of Contract Energy into and through the ERCOT transmission system. In the event Ancillary Services are provided to Buyer by Seller, then Buyer shall reimburse Seller for the Prorata share of such services at Seller's cost.

ARTICLE 4 PRICING

4.1 Payment for Contract Energy.

(a) Commencing on the Service Commencement Date, and continuing throughout the Term, Buyer shall pay or cause to be paid through a Retail Service Provider or QSE permitted under Section 4.3 to the Seller Representative on behalf of each Seller Party, to be divided among them as they may internally agree and as their respective interests may appear, the Monthly Energy Payment. Payments made to the Seller Representative shall be deemed to be in satisfaction of Buyer's obligations to all Seller Parties, regardless of whether or not the Seller Representative remits funds to any of the other Seller Parties.

(b) Prepayment for Contract Capacity. On or before December 23, 2008, Buyer shall prepay \$465,000,000.00 (the "**Capacity Prepayment**") to the Seller Representative on behalf of each Seller Party as they may internally agree and as their respective interests may appear, for capacity in the Facilities as provided in this Agreement. Payments made to the Seller Representative shall be deemed to be in satisfaction of Buyer's obligations to all Seller Parties,

regardless of whether or not the Seller Representative remits funds to any of the other Seller Parties.

4.2 Adjustment to Capacity Payment.

(a) For each 1% by which the Equivalent Availability Factor – Contract during any month is calculated to be below 90%, Buyer shall receive a credit calculated as follows:

Capacity Prepayment / total number of months in the Term x 1.00% per percent below 90%.

(b) For each 1% by which Equivalent Availability Factor – Contract during any month is calculated to be above 90%, Seller shall receive a supplemental payment calculated as follows:

Capacity Prepayment / total number of months in the Term x 0.50% per percent above 90%.

(c) The “*Equivalent Availability Factor - Contract*” shall be calculated at the end of each month using a rolling, weighted-average of the Equivalent Availability Factor-Facility of all Facilities over the most recent 1,095 Days. This weighted average shall be based on the proportion of Contract Capacity represented by Buyer's Allocation of Net Rated Capacity in each Facility as stated below in this Section 4.2 (c).

The “*Equivalent Availability Factor – Facility*” shall be calculated for each Facility as follows:

Equivalent Availability Factor – Facility =

$$\frac{[\sum_{SI\ 1095} \text{Min}\{C, (M + \text{Alt Energy} + \text{FM} + \text{OB})\}]}{[\sum_{SI\ 1095} C_{SI}]}$$

C = Buyer's allocation of a Facility's Net Rated Capacity during any Settlement Interval set forth as follows*:

Prior to the COD of Oak Grove Unit 1 and COD of Oak Grove Unit 2:

Big Brown 51 MW divided by the number of Settlement Intervals in an hour
 Martin Lake 99 MW divided by the number of Settlement Intervals in an hour
 Oak Grove 0 MW divided by the number of Settlement Intervals in an hour

Upon COD of Oak Grove Unit 1:

Big Brown 41 MW divided by the number of Settlement Intervals in an hour
 Martin Lake 80 MW divided by the number of Settlement Intervals in an hour
 Oak Grove 29 MW divided by the number of Settlement Intervals in an hour

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Upon COD of Oak Grove Unit 1 and the COD Of Oak Grove Unit 2:

Big Brown 35 MW divided by the number of Settlement Intervals in an hour
Martin Lake 68 MW divided by the number of Settlement Intervals in an hour
Oak Grove 47 MW divided by the number of Settlement Intervals in an hour

*As the Net Rated Capacity of any Facility(s) may change, the megawatts listed above shall be adjusted to equal the product of (i)(a) 150 and (b) the Net Rated Capacity at the Facility divided by (ii) the Net Rated Capacity of all Facilities

$M = P * HSL$ or, any greater amount delivered by Seller, but in no event greater than C

HSL = High Sustainable Limit as defined by ERCOT

P = Buyer's Minimum Allocation Percentage of the Energy physically produced at a Facility and available to be scheduled for delivery to the Buyer at the Delivery Point of that Facility during a Settlement Interval. Buyer's Minimum Allocation Percentage may be adjusted from time to time throughout the Term to reflect changes in the Net Rated Capacity of a Unit(s). Should the Net Rated Capacity of a Unit(s) change, Minimum Allocation Percentages will be calculated as follows:

Prior to the COD of Oak Grove Unit 1 and the COD of Oak Grove Unit 2:

	Minimum Allocation Percentage
Big Brown	51 MW Divided by the total Net Rated Capacity of Big Brown Units
Martin Lake	99 MW Divided by the total Net Rated Capacity of Martin Lake Units
Oak Grove	Zero

Upon COD of Oak Grove Unit 1:

	Minimum Allocation Percentage
Big Brown	41 MW Divided by the total Net Rated Capacity of Big Brown Units
Martin Lake	80 MW Divided by the total Net Rated Capacity of Martin Lake Units
Oak Grove	29 MW Divided by the total Net Rated Capacity of Oak Grove Unit 1

Upon COD of Oak Grove Unit 1 and the COD of Oak Grove Unit 2:

	Minimum Allocation Percentage
Big Brown	35 MW Divided by the total Net Rated Capacity of Big Brown Units
Martin Lake	68 MW Divided by the total Net Rated Capacity of Martin Lake Units
Oak Grove	47 MW Divided by the total Net Rated Capacity of Oak Grove Units

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Alt Energy = Energy not physically produced at a Facility but otherwise scheduled for delivery to the Buyer at the Delivery Point corresponding to that Facility during a Settlement Interval.

FM – The megawatts where delivery was excused due to Force Majeure.

OB = The megawatts lost due to the Ordered Backdown

$\sum SI_{1095}$ = All ERCOT Settlement Intervals during the most recent 1,095 Days

(d) The Equivalent Availability Factor – Facility shall be deemed to be ninety percent (90%) for purposes of determining any payment to Buyer and ninety percent (90%) for purposes of determining any additional payment to Seller for each Settlement Interval included in the calculation above that is a Settlement Interval prior to the Service Commencement Date.

4.3 Payment through Retail Electric Provider. Buyer reserves the right to make payments required of it under this Agreement through a REP and/or through a QSE subject to Seller's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. For the avoidance of doubt, a failure by the REP and/or QSE to pay amounts to Seller as set forth herein shall be considered a Buyer Default under Section 10.3(b).

ARTICLE 5 AVAILABILITY

5.1 Availability Plan. By 8:30 a.m. (CPT) of each Day and as otherwise additionally required to comply with the ERCOT Guides during the Term, Seller shall deliver to Buyer's QSE a schedule of the estimated amounts of Contract Energy that the Facilities will be available to produce for each Settlement Interval in the following Day (an "**Availability Plan**"). Seller shall notify Buyer of updates to the Availability Plan as same are made. Seller shall also include in its Availability Plan any Alternate Energy that Seller anticipates delivering as part of the Contract Energy.

5.2 Availability Reduced by Ordered Backdown. In the event that ERCOT directs a reduction in generation by any or all of the Facilities as a result of an Emergency Condition during any Settlement Interval(s), Buyer and Seller agree that, to the extent of and during such directed reduction, the delivery of Contract Energy from Seller to Buyer shall be reduced in accordance with ERCOT's instruction by a percentage equal to the applicable Minimum Allocation Percentage set forth in Section 4.2 (c) (such instructions by ERCOT being referred to herein as an "**Ordered Backdown**").

5.3 Availability Reduced by Other ERCOT Dispatch Instructions. It is the intent of the Parties that Buyer shall be credited by ERCOT for Energy delivered at the Delivery Point for all Unit Contingent Energy capable of being produced in each Settlement Interval at each Facility. In the event that a Facility is not operating at its cumulative Net Rated Capacity in any Settlement Interval due to dispatch instructions (other than an Ordered Backdown) by ERCOT,

Seller shall deliver Alternate Energy in a quantity that when combined with the Prorata share of the Unit Contingent Energy actually produced at that Facility shall be equal to but not exceed the Buyer's allocation of a Facility's Net Rated Capacity during any Settlement Interval as specified in Section 4.2(c).

ARTICLE 6 OUTAGES; OPERATION AND MAINTENANCE

6.1 Planned Outages. For each calendar year during the Term, no later than October 1st of the preceding calendar year, Seller shall provide Buyer with a proposed schedule of Planned Outages of each unit of the Facilities for the following year. For each calendar year during the Term, Planned Outages shall in no event occur during the time periods including June 15 through September 15 nor during the months of December, January and February. Seller shall: (i) use commercially reasonable efforts to finalize the proposed schedule of Planned Outages at least three (3) months prior to the first Planned Outage planned for any calendar year during the Term, and (ii) provide Buyer with written notice of such schedule as soon as is practicable, but in no event later than ninety (90) Days prior to the first Planned outage of such calendar year.

6.2 Forced Outages. Seller and Buyer shall give notice as soon as practicable to the other Party's QSE of any Forced Outage affecting delivery or receipt of the Contract Energy.

6.3 Operation and Maintenance. Seller shall cause the Facilities to be operated and maintained in accordance with Prudent Industry Practice. Seller shall use all commercially reasonable efforts to operate the Facilities so that each Facility complies with the Law and all applicable legal and regulatory requirements.

ARTICLE 7 SCHEDULING AND TRANSMISSION

7.1 Qualified Scheduling Entity. Seller and Buyer shall each engage a QSE that shall be responsible for scheduling the Products produced and delivered hereunder or performing Energy Trades in accordance with the ERCOT Guides.

7.2 Transmission Service. Seller shall arrange and be responsible for the costs of delivering the Products, including any associated Transmission Losses from the resources used by Seller to the Delivery Points. Buyer shall arrange and be responsible for the costs of delivering the Products from the Delivery Points to its load.

7.3 Scheduling. The Parties shall confirm expected deliveries and receipts of Contract Energy via the submission of schedules, or Energy Trades, in accordance with the ERCOT Guides. Should one Party fail to accurately submit or confirm a schedule or Energy Trade, and should the other Party incur charges due to said failure, the failing Party shall be responsible for reimbursing the affected Party for such charges in addition to any charges under Section 3.3 or 3.4, as applicable. Should, due to no fault of either Party, a schedule or Energy Trade not be recognized by ERCOT, the Parties shall cooperate to correct the circumstances in such a manner as to, to the extent possible, leave both Parties economically indifferent as to the failure.

**ARTICLE 8
BILLING AND PAYMENT**

8.1 Invoice and Payment Schedules.

(a) The calendar month shall be the standard period for all payments under this Agreement. As soon as practicable after the end of each month, Seller will render to Buyer an invoice for the Monthly Energy Payment net of appropriate adjustments (whether positive or negative), charges and credits as provided in Section 3.3, Section 3.4, Section 4.2 and Article 20, above, for Energy delivered to Buyer during the preceding month. All such invoices under this Agreement shall be due and payable in accordance with Seller's invoice instructions on or before the later of: (i) the twentieth (20th) Day of each month, or (ii) the tenth (10th) Day after Buyer's receipt of the invoice or, if such Day is not a Business Day, then on the next Business Day.

(b) Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

8.2 Netting. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same payment due date pursuant to this Agreement through netting, in which case all amounts owed by each Party to the other Party and due on the same payment due date under this Agreement, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes such excess amount; provided, however, no amounts under this Agreement shall be subject to diminution or recoupment by set-off.

8.3 Disputed Charges. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twenty-four (24) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent or incorrect overpayments shall be returned within five (5) Business Days after request of the Party adversely affected by the overpayment. In the absence of such a request for return, the Party receiving such overpayment shall credit the amount thereof to the invoice(s) next becoming due. In either case, interest shall be paid or credited to the overpaying Party at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or the date of the invoice, as the case may be. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 8.3 within twenty-four (24) months after the invoice is rendered or any specific adjustment to the invoice is made.

8.4 Audits. Each Party has the right, at its sole expense and during normal working hours, to examine copies of the relevant portions of the records of the other Party to the extent reasonably necessary to verify the accuracy of any invoice, charge or calculation made pursuant to this Agreement. If any such examination reveals any inaccuracy in any invoice or calculation, the necessary adjustments in such invoice or calculation, and the payment of any adjustment thereto, shall be paid, with interest at the Interest Rate calculated from the date the overpayment or underpayment was made until paid, by the responsible Party within ten (10) Days after it receives an invoice from the other Party setting forth in reasonable detail the calculation of such adjustments; provided, however, that no adjustment for any invoice or payment will be made unless the objection to the accuracy thereof was made within twenty-four (24) months after the date of the invoice which is the subject of the dispute, and thereafter any objection shall be deemed waived.

8.5 ERCOT Barred Issue. It is recognized by the Parties that ERCOT has some established time periods for disputing certain matters and the Parties expressly desire to be bound by such periods in their performance under this Agreement. Therefore, notwithstanding any provisions in Article 8 of this Agreement to the contrary, in the event either Party is barred from disputing and correcting or adjusting with ERCOT any matter of any nature whatsoever affecting any matter covered by this Agreement (an "**ERCOT Barred Issue**"), then either Party shall be barred for all purposes from disputing any portion of any statement, invoice, notice or other matter hereunder to the extent that either Party is unable to receive adjustment from or dispute such matter with ERCOT because such statement, invoice, notice or other matter is an ERCOT Barred Issue, even if such Party's notice is given within the twenty-four (24) months' period set forth in Article 8.

ARTICLE 9 SECURITY

9.1 Buyer's Security.

(a) Once Seller has received the Capacity Prepayment from Buyer and subject to the prior execution and delivery by Buyer of an Accession Agreement in accordance with Section 5.6 of the Intercreditor Agreement, Seller will contemporaneously secure its obligations under this Agreement by granting to Buyer a First Lien in accordance with the terms of the Intercreditor Agreement, including, without limitation, by designating this Agreement as a Secured Commodity Hedge and Power Sales Agreement and its obligations under this Agreement as Secured Obligations. Throughout the Term, Buyer's First Lien (or the amount of any Substitute Collateral or New Collateral) amount shall automatically adjust to the Buyer Termination Payment less any applicable Collateral Threshold amount.

(b) Subject to Section 9.2 below, in no event may Seller sell assets or permit the release of the liens on the Collateral, individually or in the aggregate and whether in one or a series of transactions, on assets comprising all or substantially all of the Collateral. Subject to Section 9.2 below, if the Credit Agreement is terminated, including in connection with any amendment, restatement, supplement, replacement, Refinancing, waiver or other modification from time to time, the liens securing Seller's (and each guarantor's) obligations to Buyer shall survive. Subject to the foregoing, Buyer agrees that it shall, at Seller's sole cost and expense,

release its liens on and security interests in the Collateral (and Buyer shall promptly execute such releases and other documentation as may be necessary or, in the reasonable opinion of Seller, desirable to effect such release) on the date on which no obligations in respect of this Agreement remain outstanding (other than contingent and unasserted obligations in respect of indemnities and similar provisions).

(c) The further assurances terms, in the form contained in Section 9.9 of the Intercreditor Agreement giving effect to any amendment, restatement, supplement, replacement, Refinancing, waiver or other modification from time to time, shall be incorporated by reference herein or by supplement hereto.

(d) For purposes of the Intercreditor Agreement, the Floor Amount of Buyer in respect of this Agreement shall be \$0.

9.2 (a) Substitute Collateral. At any time during the Term (including upon a Refinancing) and upon three (3) Business Days' prior written notice, Seller may substitute any collateral provided hereunder (including the First Lien) with (i) a letter of credit, from Investment Grade banks (with expiring Letters of Credit to be replaced with a new letter of credit not less than 30 days prior to expiration) (ii) cash and/or cash equivalents (iii) guaranty from a guarantor that is Investment Grade, or (iii) other collateral reasonably acceptable to Buyer ((i), (ii) and (iii) referred to as the "Substitute Collateral"). Upon the transfer by Seller to Buyer of the Substitute Collateral, Buyer shall, at Seller's sole cost and expense, release its liens on and security interests in the Collateral or New Collateral, as applicable (and Buyer shall promptly execute such releases and other documentation as may be necessary or, in the reasonable opinion of Seller, desirable to effect such release and/or relinquish any rights to make claims on the First Lien).

(b) Replacement Collateral Upon Refinancing. Seller may, upon a Refinancing, replace the First Lien with the new collateral package (the "New Collateral") under such Refinancing provided that Buyer continues to be pari passu with the lenders under such Refinancing on a first lien basis (subject to other liens which are permitted by the terms of the documentation governing such Refinancing). The New Collateral shall be substantially similar in substance to the First Lien (as constituted on the Business Day prior to the Refinancing) as reasonably determined by Seller in good faith. The Parties agree that the New Collateral shall automatically be deemed to be substantially similar so long as (A) (i) the assets and other property subject to the New Collateral are identical to the assets and property subject to the First Lien as of the Business Day prior to the Refinancing and (ii) after giving effect to the Refinancing, the amount of Secured Obligations in the form of debt for borrowed money outstanding after giving effect to such Refinancing shall not exceed 110% of the amount of such obligations outstanding immediately preceding such Refinancing; provided however that if the amount of Secured Obligations in the form of debt for borrowed money outstanding after giving effect to such Refinancing exceeds 110% of the amount of such obligations outstanding immediately preceding such Refinancing, then the New Collateral shall still automatically be deemed substantially similar so long as, after giving effect to the Refinancing, the ratio of the fair market value (as determined by an independent valuation or appraisal firm selected by Seller) of the New Collateral divided by the amount of Secured Obligations in the form of debt for borrowed money outstanding after giving effect to such Refinancing shall not be less than

1.15:1.00 or (B) (i) it is secured by Baseload Units that have the nameplate capacity in the aggregate of at least 3,000 megawatts and (ii) after giving effect to the Refinancing, the amount of Secured Obligations in the form of debt for borrowed money outstanding after giving effect to such Refinancing shall not exceed 110% of the amount of such obligations outstanding immediately preceding such Refinancing; provided however that if the amount of Secured Obligations in the form of debt for borrowed money outstanding after giving effect to such Refinancing exceeds 110% of the amount of such obligations outstanding immediately preceding such Refinancing, then the New Collateral shall still automatically be deemed substantially similar so long as, after giving effect to the Refinancing, the ratio of the fair market value (as determined by an independent valuation or appraisal firm selected by Seller) of the New Collateral divided by the amount of Secured Obligations in the form of debt for borrowed money outstanding after giving effect to such Refinancing shall not be less than 1.15:1.00. For the avoidance of doubt, should the New Collateral be subject to multiple secured liens, Buyer's lien shall be governed by any new intercreditor agreement entered into at the time of such Refinancing and Buyer agrees to execute any such new intercreditor agreement. Upon the transfer by Seller to Buyer of the New Collateral, Buyer shall, at Seller's sole cost and expense, release its liens on and security interests in the Collateral (and Buyer shall promptly execute such releases and other documentation as may be necessary or, in the reasonable opinion of Seller, desirable to effect such release and/or relinquish any rights to make claims on the First Lien).

9.3 Guaranty. In addition to the security provided above, Seller shall provide to Buyer, and Guarantor shall execute and deliver to Buyer on the date set forth in Section 11.1(c) and maintain throughout the Term a guaranty substantially in the form attached hereto as Exhibit "5" and in the amount, which such amount shall automatically adjust, equal to the Buyer Termination Payment less any applicable Collateral Threshold amount.

ARTICLE 10 DEFAULT

10.1 Default By Seller. Except as otherwise excused under this Agreement, the occurrence of any of the following shall constitute an event of default by Seller ("***Seller Default***"):

(a) Seller fails to supply or deliver the Contract Energy (including Alternate Energy under Section 5.3) to Buyer as required hereunder for five (5) consecutive Days and such failure continues for two (2) Days after written notice provided by Buyer to Seller; or Seller fails to supply or deliver the Contract Energy (including Alternate Energy under Section 5.3) and such failure exceeds the equivalent number of Settlement Intervals of seven (7) days total in any ninety (90) day period, or ten (10) days in any twelve (12) month period; provided, however, this Section 10.1(a) shall not apply if such supply or delivery is excused by other provisions in this Agreement;

(b) If the security provided hereunder is a First Lien or the New Collateral, any lender under the First Lien, as same may have been renewed, extended, modified, Refinanced or secured by the New Collateral as provided in Section 9.2 from time to time (including any new lender to the New Collateral), has accelerated the debt, or otherwise caused

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amounts owing to be immediately due and payable under the Credit Agreement then in effect, and/or a foreclosure proceeding is commenced by the Collateral Agent against a secured asset;

(c) Seller fails to provide and continuously maintain security to Buyer as required in Article 9, above;

(d) Seller breaches any material contractual obligation (except to the extent constituting a separate Seller Default) to Buyer under this Agreement and such breach continues for a period of thirty (30) Days after the date on which written notice thereof is given to Seller by Buyer;

(e) A representation or warranty furnished by Seller in connection with this Agreement was false or misleading in any material respect when made, unless (i) the fact, circumstance or condition that is the subject of such representation or warranty is made true within thirty (30) Days after the Buyer has given notice thereof to Seller, or Seller has timely undertaken action to make such representation or warranty true within said thirty (30) Days and thereafter diligently continues its efforts to make same true, provided that the warranty or representation is made true and correct within ninety (90) Days thereafter; and (ii) such cure removes any adverse affect on the Buyer of such fact, circumstance or condition being otherwise than as first represented, or such fact, circumstance or condition being otherwise than as first represented does not materially adversely affect the Buyer; and

(f) Any Seller or Guarantor becomes Bankrupt.

10.2 Remedies on Seller Default. Unless otherwise limited by the terms of this Agreement, the Buyer shall have the right, but not the obligation, to elect to pursue any one or more of its remedies against Seller, which shall consist of, but not be limited to, the following:

(a) Buyer may immediately suspend performance of its obligations under this Agreement, including without limitation its obligations to pay the Monthly Energy Payment and adjustments, if any, to the Capacity Payment as provided in Article 4, until the earlier of (i) the Day the Seller Default has been cured in accordance with the terms of this Agreement or (ii) ten (10) Business Days;

(b) Buyer may terminate this Agreement, so long as Buyer terminates within ninety (90) days of the Seller Default (if Buyer fails to terminate within such 90 day period, Buyer waives its right to terminate for such Seller Default), and calculate a Termination Payment in accordance with Article 12; and/or

(c) Buyer may exercise any other remedy available to it at law or in equity, provided, however, that in the event that any remedy of damages awarded by a court shall exceed the amount of damages that Buyer would be entitled to receive from Seller under Article 12 of this Agreement, then Seller and Buyer agree between themselves that Seller's obligation to perform under such award shall be limited to the amount of damages for such default contractually provided for under Article 12 of this Agreement, plus reasonable attorney's fees.

10.3 Default By Buyer. Except as otherwise excused under this Agreement, the occurrence of any of the following shall constitute an event of default by Buyer ("**Buyer Default**"):

(a) Buyer fails to accept delivery of the Contract Energy from Seller as required hereunder for five (5) consecutive Days and such failure continues for two (2) Days after written notice provided by Seller to Buyer; or Buyer fails to accept delivery of the Contract Energy and such failure exceeds the equivalent number of Settlement Intervals of seven (7) days total in any ninety (90) day period, or ten (10) days in any twelve (12) month period; provided, however, this Section 10.3(a) shall not apply if such acceptance is excused by other provisions of this Agreement; or

(b) Except for disputed charges arising under Section 8.3 and permitted withholding of payments under Section 10.2(b), (i) Buyer (or its affiliated REP and/or QSE) fails to pay any amounts due hereunder, and such failure continues for a period of five (5) Business Days after the date on which written notice of a such default and failure has been received by Buyer or, (ii) in the event Buyer has paid its independent third party REP or QSE, as applicable, and such REP or QSE fails to pay Seller and Buyer fails to (A) contract with a new REP or QSE within thirty (30) days after receiving written notice from Seller of such failure to pay or (B) make Seller whole for the missed monthly payment plus interest at the Interest Rate (for the period of time from the date the payment was originally due to the date the payment is made) within 180 days of the original due date. In addition, it shall be considered a Buyer Default if, after contracting with a new REP or QSE, if such REP or QSE or Buyer fails to pay any amounts due hereunder and such failure continues for a period of five (5) Business Days after the date on which written notice of such default and failure has been received by Buyer; or

(c) Buyer breaches any material contractual obligation (except to the extent constituting a separate Seller Default) to Seller under this Agreement and such breach continues for a period of thirty (30) Days after the date on which written notice thereof is given to Buyer by Seller;

(d) A representation or warranty furnished by Buyer in connection with this Agreement was false or misleading in any material respect when made, unless (i) the fact, circumstance or condition that is the subject of such representation or warranty is made true within thirty (30) Days after the Seller has given notice thereof to Buyer, or Buyer has timely undertaken action to make such representation or warranty true within said thirty (30) Days and thereafter diligently continues its efforts to make same true, provided that the warranty or representation is made true and correct within ninety (90) Days thereafter; and (ii) such cure removes any adverse affect on the Seller of such fact, circumstance or condition being otherwise than as first represented, or such fact, circumstance or condition being otherwise than as first represented does not materially adversely affect the Seller; or

(e) Buyer becomes Bankrupt.

10.4 Remedies on Buyer Default. Unless otherwise limited by the terms of this Agreement, the Seller shall have the right, but not the obligation, to elect to pursue any one or more of its remedies against Buyer, which shall consist of, but not be limited to, the following:

(a) Seller may immediately suspend performance of its obligations under this Agreement, including without limitation its obligations to deliver Products, until the earlier of (i) the Day the Buyer Default has been cured by payment in accordance with the terms of this Agreement or (ii) ten (10) Business Days;

(b) Seller may terminate this Agreement, so long as Seller terminates within ninety (90) days of the Buyer Default (if Seller fails to terminate within such 90 day period, Seller waives its right to terminate for such Buyer Default), and calculate a Termination Payment in accordance with Article 12;

(c) Seller may exercise any other remedy available to it at law or in equity provided, however, that in the event any remedy of damages awarded by a court shall exceed the amount of damages that Seller would be entitled to receive from Buyer under Article 12 of this Agreement, then Seller and Buyer agree between themselves that Buyer's obligation to perform under such award shall be limited to the amount of damages for such default contractually provided for under Article 12 of this Agreement, plus reasonable attorney's fees;

10.5 No Waiver in Event of Default. Pursuit by either Party of any remedy for Default pursuant to Section 10.2 or Section 10.4 of this Agreement, as the case may be, shall not constitute a forfeiture or waiver of any amount due by the defaulting Party or of any damages occurring by reason of the violation of any terms, provisions, or conditions of this Agreement. No waiver of any Seller Default, Buyer Default, or breach of this Agreement shall be deemed or construed to constitute a waiver by the non-defaulting Party of any other violation or breach of any of the terms, provisions, or conditions of this Agreement. Forbearance by Seller to enforce one or more of the remedies available upon the occurrence of an event of Buyer Default shall not constitute a waiver of the right to fully pursue any and all available remedies upon a subsequent Buyer Default or breach. Forbearance by Buyer to enforce one or more of the remedies available upon the occurrence of an event of Seller Default shall not constitute a waiver of the right to fully pursue any and all available remedies upon a subsequent Seller Default or breach.

ARTICLE 11 TERMINATION PRIOR TO SERVICE COMMENCEMENT DATE

11.1 Right of Termination Prior to the Service Commencement Date. Each Party grants to the other Party, the right to terminate this Agreement on or before 5:00 p.m. CPT of the last deadline Day set forth in this Section 11.1 as hereinafter provided ("**Member Contract Deadline**"). Each Party's obligations to the other Party under this Agreement are expressly conditioned upon the timely occurrence of each of the following events:

(a) Adoption by Participating Members on or before November 5, 2008, of ordinances or other appropriate action (i) approving the Energy such Participating Member elects to take, (ii) ratifying the form of Member Output Contract between Buyer and the Participating Member, (iii) agreeing to pay Buyer for its share of Energy and charges as outlined in Article 20 delivered to Buyer by Seller, and (iv) authorizing a designated official to execute the Member Output Contract on behalf of the Participating Member;

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(b) Buyer's receipt, on or before November 5, 2008, of executed Member Output Contracts for 150 megawatts pursuant to which Participating Members collectively commit to contract for the full Contract Capacity, and containing provisions for (i) an Energy price component and charges under Article 20 associated with each respective Participating Member's share of the Energy received to be paid as an annual, budgeted expense of such Participating Member subject to annual appropriation, (ii) with the right of Buyer to enforce, by a mandamus action against the governing body of the particular defaulting Participating Member, such provisions for any fiscal year for which there has been an appropriation, and (iii) the representations, warranties and covenants set forth in Section 15.3(d) of this Agreement;

(c) Issuance, on or before December 23, 2008, by Buyer of debt in the form of contract revenue bonds, in the amount of not less than the Capacity Prepayment plus costs of issuance of and reserves required to be maintained under such contract revenue bonds ("**Bonds**"), such Bonds to be secured by the pledge and assignment by Buyer to a trustee, pursuant to a trust agreement between Buyer and such trustee, of the capacity payment component of each Member Output Contract constituting a contract under Subchapter A of Chapter 271, Local Government Code, as amended, payable from such respective Participating Member's ad valorem taxes within the limits prescribed by law;

(d) Buyer's payment, on or before December 23, 2008, of the Capacity Prepayment.

(e) Seller delivers a guaranty substantially in the form of Exhibit "5" to Buyer by December 23, 2008.

(f) As soon as reasonably practicable, but in no event later than December 23, 2008, Seller shall deliver (i) a reliance letter from Simpson Thacher & Bartlett ("STB") expressly allowing Buyer to rely on the opinion of STB that was delivered on October 10, 2007 to the lenders under the Credit Agreement ("STB Opinion"), (ii) a reliance letter from Vinson & Elkins ("V&E") expressly allowing Buyer to rely on the opinion of V&E delivered on October 10, 2007 to the lenders under the Credit Agreement ("V&E Opinion," and together with the STB Opinion, the "Financing Opinions"), and (iii) a legal opinion from external counsel selected by Seller containing substantially the provisions set forth in Exhibit "6" with such qualifications and changes made by Seller or its external counsel and approved by Buyer (such approval not to be unreasonably withheld, conditioned or delayed). For the avoidance of doubt, (a) with respect to the reliance letter contemplated in (i) and (ii) of this paragraph, it is understood that such reliance shall be only as of the date of the STB and V&E opinions and that STB and V&E shall not be under any obligation to update such opinions and (b) with respect to the opinion contemplated in (iii) of this paragraph, it is understood that (y) such opinion can be delivered in one or more opinions by one or more external counsel and (z) if any such opinion is delivered by STB or V&E such opinion may be in the form of such firm's respective Financing Opinion and may contain any relevant qualification or exception contained in such firm's respective Financing Opinion (including any qualification or exception that would be applicable to the Agreement).

11.2 Termination Right. If the events set forth in Section 11.1(a) through 11.1(f), inclusive, have not been met by the Member Contract Deadline, either Party may terminate this Agreement

by delivering written notice thereof to the other Party, whereupon the rights, obligations and liabilities of Seller and Buyer hereunder shall thereupon cease.

11.3 Notice to Seller Concerning Obligations of Participating Members. The obligation of a Participating Member to make any payments pursuant to the energy price component of the Member Output Contract (including Governmental Charges and New Governmental Charges) shall constitute a current expense of the Participating Member during each fiscal year and shall not constitute an indebtedness of the Participating Member within the meaning of Texas law. If, for any fiscal year during the term of the Member Output Contract, a Participating Member does not appropriate available funds during such fiscal year to pay the Energy price component of the Member Output Contract required under the Member Output Contract due during the succeeding fiscal year, and if such Participating Member provides Buyer with written notice of such failure to appropriate fifteen (15) days prior to the expiration of the then current fiscal year, there shall be no obligation of such Participating Member to make energy price component payments and to receive Energy under the Member Output Contract for such fiscal year. Except as set forth in Article 12, Seller shall not be required to pay any portion of the Capacity Prepayment for any non-appropriation. Any Participating Member may, for any other succeeding fiscal year during the term of the Member Output Contract, elect to appropriate available funds of the Participating Member during such other fiscal year to pay the Energy price component of the Member Output Contract required under the Member Output Contract due during such succeeding fiscal year and receive Energy under the Member Output Contract for such fiscal year. Notwithstanding the foregoing, Buyer remains obligated to receive and pay, as set forth herein, for the Products delivered hereunder.

ARTICLE 12 EARLY TERMINATION

If a Default occurs with respect to a defaulting Party at any time during the Term, the non-defaulting Party may (i) establish a date not less than ten (10) days after such notice is effective and no later than thirty (30) Days after such notice is effective, as an early termination date (the "Early Termination Date") on which this Agreement shall terminate and (ii) accelerate all amounts owing between the Parties and (iii) suspend performance of any obligations and withhold any payments due in respect of this Agreement.

If an Early Termination Date has been designated, the non-defaulting Party shall calculate in a commercially reasonable manner the present value of its economic loss as set forth below, if any, to the non-defaulting Party related to the delivery or receipt of Contract Energy as set forth in this Article 12 for the remaining Term of the Agreement.

If Seller is non-defaulting Party, Buyer shall pay Seller a termination payment (the "Seller Termination Payment") equal to the sum of (i) any outstanding amounts owed by Buyer to Seller for Energy delivered (including charges under Article 20), but unpaid; (ii) Seller's Loss (as defined below); and (iii) the present value of unpaid New Governmental Charges for Energy (discounted at the Discount Rate) that would have been delivered had this Agreement continued until the end of the Term with no early termination, less (iv) any amounts paid by Buyer to Seller under Section 3.3 for the immediately preceding three (3) year period prior to Refinancing or,

following a Refinancing, for the immediately preceding five (5) year period. "If the Seller Termination Payment is less than the present value (discounted at the Discount Rate) of any not-yet-Earned Portion(s) of the Capacity Prepayment as set forth in Exhibit "3" as of the Early Termination Date, Seller shall return to Buyer the positive difference. If the present value (discounted at the Discount Rate) of any not-yet-Earned Portion(s) of the Capacity Prepayment as set forth in Exhibit "3" as of the Early Termination Date is less than the Seller Termination Payment, Buyer shall pay Seller the difference. "Seller's Loss" shall equal the positive difference, if any, of (i) (a) the Early Termination Reference Replacement Price as specified within Exhibit "2" times (b) the Yet-to-be-Delivered Quantity (MWh) as specified within Exhibit "2" less (ii) the Energy revenue stream(s) related to a replacement sales agreement (the "Replacement Agreement") whether or not a Replacement Agreement is actually entered into by Seller. Seller's Loss shall be capped at \$120,000,000 declining ratably throughout the Term.

If Buyer is non-defaulting Party, Seller shall pay Buyer a termination payment (the "Buyer Termination Payment") equal to the sum of (i) the Seller's prorata share, in the event Buyer's Bonds exceed \$465,000,000, of the remaining principal balance on the Bonds (Seller is only responsible for the principal amount remaining from the \$465,000,000); and (ii) the greater of (a) Buyer's Loss (as defined below) and (b) the Make Whole Premium (as defined below), less (iii) any amounts paid by Seller to Buyer under Section 3.4 for the immediately preceding three (3) year period prior to Refinancing or, following a Refinancing, for the immediately preceding five (5) years. The Seller shall pay Buyer the Buyer Termination Payment less any unpaid amount outstanding for Energy delivered (including charges under Article 20). "Buyer's Loss" shall equal the positive difference, if any, of (i) (a) the cost(s) associated with replacing the Contract Energy through a Replacement Agreement whether or not Buyer actually enters into a Replacement Agreement less the (i) (a) the Early Termination Reference Replacement Price as specified within Exhibit "2" times (b) the Yet-to-be-Delivered Quantity (MWh) as specified within Exhibit "2". Buyer's Loss shall be capped at \$120,000,000 declining ratably throughout the Term.

Replacement Agreement revenue streams and costs shall be determined under then current market conditions with respect to an assumed Replacement Agreement for a multi-unit-contingent energy agreement which shall have characteristics similar to this Agreement including all of its terms and conditions as determined by the non-defaulting Party in a commercially reasonable manner. Factors used in determining any revenue stream(s) or cost(s) under a Replacement Agreement may include, without limitation, a comparison of comparable transactions, third party quotations from leading dealers in Energy contracts, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g. NYMEX), the remaining Term of the Agreement, and current discount rates.

As soon as practicable after the occurrence of an Early Termination Date, notice shall be given by the non-defaulting Party to the defaulting Party of the amount of the Seller Termination Payment or Buyer Termination Payment, as applicable as set forth above. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The net amount of the Seller Termination Payment or Buyer Termination Payment, as applicable, shall be made by the defaulting Party within five (5) Business Days after such notice is effective.

The "**Make Whole Premium**" means the redemption premium calculated under the "make whole" redemption provision contained in the Buyer's Bonds, as described in Section 11.1(c) hereof, being that portion of the Redemption Price less the outstanding principal amount of the Bonds thereof, substantially similar to the following terms:

'The Bonds shall be subject to redemption at the option of Buyer, in whole or in part, on any date from any legally available funds, at the Redemption Price equal to the greater of:

(i) 100% of the principal amount of Seller's prorata share, in the event Buyer's Bonds exceed \$465,000,000, of all outstanding Bonds to be redeemed (Seller is only responsible for the principal amount remaining associated with \$465,000,000); or

(ii) the sum of the present values of the remaining scheduled payments of principal (taking into account any mandatory sinking fund provisions associated with term bonds) and interest on all outstanding Bonds to be redeemed (exclusive of interest accrued to the date fixed for redemption) discounted to the date of redemption on a [semiannual basis] (assuming a 360-day year consisting of twelve 30-day months) at the Discount Rate, plus accrued and unpaid interest on the Bonds being redeemed to the date fixed for redemption.

For purposes of determining the Treasury Rate, the following definitions will apply:

"Treasury Rate" means, with respect to any redemption date for a particular Bond, the rate per annum, expressed as a percentage of the principal amount equal to the [semiannual equivalent yield] to maturity or interpolated maturity of the Comparable Treasury Issue, assuming that the Comparable Treasury is purchased on the redemption date for a price equal to the Comparable Treasury Price, as calculated by the Designated Investment Banker.

"Comparable Treasury Issue" means, with respect to any redemption date for a particular Bond, the United States Treasury security or securities selected by the Designated Investment Banker which has an actual or interpolated maturity comparable to the remaining average life of the applicable Bond to be redeemed, and that would be utilized in accordance with customary financial practice in pricing new issues of debt securities of comparable maturity to the remaining average life of the Bond to be redeemed.

"Comparable Treasury Price" means, with respect to any redemption date for a particular Bond, (1) if the Designated Investment Banker receives at least four Reference Treasury Dealer Quotations, the average of such quotations for such redemption date, after excluding the highest and lowest Reference Treasury Dealer Quotations, or (2) if the Designated Investment Banker obtains fewer than four such Reference Treasury Dealer Quotations, the average of all such

quotations.

"Designated Investment Banker" means one of the Reference Treasury Dealers appointed by Buyer.

"Reference Treasury Dealer" means the senior managing underwriter of the Bonds to be selected by Buyer with respect to the initial sale and delivery of the Bonds and its respective successors and three other Primary Treasury Dealers, as defined below, specified by Buyer from time to time, that are in the top five (as measured by the lower of such dealers S&P and Moody's credit ratings at the time of termination) primary U.S. Government securities dealers in the City of New York (each a "Primary Treasury Dealer"); provided, however, that if any of them ceases to be a Primary Treasury Dealer, Buyer shall substitute another Primary Treasury Dealer.

"Reference Treasury Dealer Quotations" means, with respect to each Reference Treasury Dealer and any redemption date for a particular Bond, the average, as determined by the Designated Investment Banker, of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) quoted in writing to the Designated Investment Banker by such Reference Treasury Dealer at 3:30 p.m., New York City time, on the third business day preceding such redemption date.'

ARTICLE 13 INDEMNIFICATION; LIMITATION OF LIABILITY

13.1 Buyer's Indemnification of Seller. To the extent permitted by the Constitution and laws of the State of Texas, and with full reservation of all defenses and immunities available under the Law, Buyer agrees to and shall indemnify, defend, and hold harmless Seller, and all of their respective officers, directors, shareholders, employees, servants, and agents, from and against all Indemnified Claims, including Indemnified Claims for personal injury, death, or damages to property, occurring on Buyer's side of the Delivery Point or arising out of or related to the Products except to the extent caused by the gross negligence or willful misconduct of Seller.

13.2 Seller's Indemnification of Buyer. Seller agrees to and shall indemnify, defend, and hold harmless Buyer and its respective officers, officials, directors, employees, servants and agents from and against all Indemnified Claims, including Indemnified Claims for personal injury, death, or damages to property occurring on Seller's side of the Delivery Point and at the Delivery Point, arising out of or related to the Facilities, the Products, or both except to the extent caused by the gross negligence or willful misconduct of Buyer; provided, however, Seller shall only be required to indemnify, defend, and hold harmless Buyer, its respective officers, officials, directors, employees, servants and agents to the same extent as Buyer would be allowed to indemnify, defend and hold harmless Seller and all of its respective officers, directors, shareholders, employees, servants and agents if Buyer were the indemnifying Party.

13.3 Indemnified Claims. "*Indemnified Claims*", as used in Section 13.1 and Section 13.2, above, means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity during the Term, and the resulting losses, damages, expenses, attorneys' fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

13.4 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH IN THIS AGREEMENT, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGE IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED EXCEPT AS SET FORTH IN SECTION 10.2(c) AND SECTION 10.4(c) OF THIS AGREEMENT. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE IS SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE 14 FORCE MAJEURE

Force Majeure means an event or circumstance beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure. It may include, without limitation, failure or interruption of the operation or maintenance of the Facility or the production, delivery or acceptance hereunder due to an act of God; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; banditry; terrorist activity or a threat of terrorist activity which, under the circumstances, would be

considered a precursor to actual terrorist activity; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosions that are not the result of Seller failing to operate the Facility in accordance with Prudent Industry Practice; fire that is not the result of equipment malfunction, boiler explosion, or malfunction of the control panel, and for which neither the manufacturer is liable nor the operator is responsible; earthquake; abnormal weather conditions that exceed weather criteria used in design of the Facility; hurricane; flood; wind at or exceeding those generated in F1 tornadoes as measured by the Fujita Scale of Tornadoes; the binding order of any Governmental Authority other than a Governmental Authority affiliated with the Party claiming Force Majeure (provided that such order has been resisted in good faith by all reasonable legal means); the failure to act on the part of any Governmental Authority other than a Governmental Authority affiliated with the Party claiming Force Majeure (provided that such action has been timely requested and diligently pursued); general market unavailability of equipment, products or critical supplies (including, but not limited to an unavailability at a Facility of both coal and lignite). Neither the lack of money nor changes in market conditions nor changes in the delivered fuel prices (including, without limitation, all transportation costs) to a Facility shall constitute an event of Force Majeure. Seller's obligation to fulfill the Preexisting Environmental Commitments to the Martin Lake Facility and Big Brown Facility shall not be deemed an event of Force Majeure.

If either Party is rendered unable by Force Majeure to carry out, in whole or in part, its obligations under this Agreement and such Party gives notice and full details of the event to the other Party as soon as practicable after the occurrence of the event, then during the pendency of such Force Majeure but for no longer period, the obligations of the Party affected by the event (other than the obligation to make payments as required hereunder) shall be suspended to the extent required. The Party affected by the Force Majeure shall remedy the Force Majeure with all reasonable dispatch. Notwithstanding anything to the contrary herein, the Parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the Party experiencing such disturbance.

**ARTICLE 15
REPRESENTATIONS, WARRANTIES,
OBLIGATIONS AND ACKNOWLEDGMENTS**

15.1 Representations and Warranties Made by Each Party. Each Party represents and warrants to the other Party that:

(a) Such Party has the power and authority to execute, deliver and perform its obligations under this Agreement and the execution, delivery and performance of this Agreement has been duly authorized by such Party.

(b) This Agreement constitutes a legal, valid and binding obligation of such Party, except as the enforceability of this Agreement may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditor's rights generally and by general principles of equity which permit the exercise of judicial discretion.

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(c) Neither the execution or delivery of this Agreement results in any breach of or constitutes any default under any material agreement to which such Party is bound, including without limitation the Security Documents, or causes such Party to be in violation of any Law, regulation, administrative or judicial order or process or decision to which such Party is a party or by which it or its properties are bound or affected.

(d) It is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt.

(e) It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing.

(f) All governmental and other authorizations, approvals, consents, notices and filings that are required to have been obtained or submitted by it with respect to this Agreement or other document relating hereto or thereto to which it is a party have been obtained or submitted and are in full force and effect and all conditions of any such authorizations, approvals, consents, notices and filings have been complied with.

(g) No Default with respect to it, or event which with notice and/or lapse of time would constitute such a Default, has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or other document relating hereto or thereto to which it is a party.

(h) There is not pending or, to its knowledge, threatened against it or any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement, or other document relating hereto or thereto to which it is a party or its ability to perform its obligations under the same.

15.2 Seller's Representations and Warranties to Buyer. Seller additionally represents and warrants to Buyer that:

(a) upon execution of the Accession Agreement, Buyer shall become a Secured Commodity Hedge Counterparty under the Security Documents, entitled to share in the First Lien, Collateral and Proceeds thereof as provided in the Security Documents to the extent of Buyer's Secured Obligations (as therein defined); and

(b) it has determined in good faith that this Agreement has not been entered into for speculative purposes and is entered into in the ordinary course of business consistent with past and current practice.

15.3 Buyer's Representations and Warranties to Seller. Buyer additionally represents and warrants to Seller that:

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- (a) Buyer is authorized by law to enter into this Agreement;
- (b) As of December 1, 2008, Buyer will have a fully executed Member Output Contract in place with each Participating Member for at least the length of the Term, that cumulatively provides for the purchase of the Contract Capacity by the Participating Members from Buyer;
- (c) Buyer shall use all reasonable efforts to meet the deadlines set forth in Section 11.1(a), (b), (c) and (d); and
- (d) Buyer represents and warrants that it will have the following provisions in each of its Member Output Contracts:
 - (i) A representation from the Participating Member that there are no circumstances presently affecting such Participating Member that could reasonably be expected to adversely affect the ability to budget funds for the payment of all sums due under the Member Output Contract;
 - (ii) A provision requiring the Participating Member to notify Buyer in writing of such non-appropriation at the earliest practicable time subsequent to the failure to appropriate;
 - (iii) To the extent permitted by the Constitution and laws of the State of Texas, a provision whereby the Participating Member agrees not to use its inherent powers as a Governmental Authority in any other manner to circumvent the terms and provisions of the Member Output Contract or the terms of this Agreement; and
 - (iv) To the extent permitted by the Constitution and the laws of the State of Texas, a provision granting to Buyer the right to enforce the Member Output Contract against the Participating Member.

15.4 Buyer and Seller Obligations. Each Party agrees to abide by all ERCOT Guides, and any rules and/or directives of ERCOT, the PUCT, the IMM, the TRE, the NERC, the FERC, as applicable, or any successor thereto that are applicable to it with respect to fulfilling its responsibilities under this Agreement. Each such Party shall reasonably cooperate with the other Party (upon reasonable notice and at the other Party's cost) to the extent necessary for the other Party to timely comply with such requirements that are applicable to it. Additionally, Buyer hereby agrees to pursue all reasonable actions to ensure that Buyer fulfills the intent of the obligations necessary to make Seller whole for Energy provided under this Agreement.

15.5 Acknowledgements. The Parties hereby acknowledge and agree that this Agreement is a Covered Contract and shall be subject to all applicable provisions of the Code.

15.6 Seller Obligations.

- (a) Seller agrees that it will operate and maintain its respective Facility(ies) throughout the Term in accordance with Prudent Industry Practice and required permits.
- (b) Each Seller agrees to design all future improvements with respect to such Seller's Facility(ies) in accordance with Prudent Industry Practice.

**ARTICLE 16
NOTICES**

All notices and other communications required or permitted by this Agreement or by Law to be served upon or given to a Party by the other Party shall be deemed duly served and given when received after being delivered by hand, or courier service, or sent by confirmed facsimile or certified mail, return receipt requested, postage prepaid, to the following address.

To Buyer:

Cities Aggregation Power Project, Inc.
Lloyd Gosselink
816 Congress, Suite 1900
Austin, Texas 78701

Attention: Geoffrey M. Gay, General Counsel
Telephone: 512-322-5875
Facsimile: 512-472-0532

To Seller:

To Big Brown:
To Luminant Generation:
To Oak Grove:
in care of:
Contract Administration
500 North Akard
Dallas, TX 75201

Telephone: (214)875-9211
Facsimile: (214)875-9266

Notices shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the Day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be

effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

ARTICLE 17 CONFIDENTIALITY

17.1 Confidential Information.

For purposes of this Article 17, the term “*Confidential Information*” means any and all confidential, proprietary, or secret information (including, without limitation, forecasts, components, parts, drawings, sketches, flow charts, plans, reports, handbooks, documentation, programs, data, feedback, features, techniques, processes, algorithms, inventions, financial information and analysis, marketing plans and studies, proposed and actual pricing information, and the identity of actual or potential customers) which is disclosed by one Party to the other Party. All Confidential Information of a Party (“*Disclosing Party*”) which is disclosed to or otherwise received or obtained by the other Party (“*Receiving Party*”) incident to this Agreement shall be held, in confidence, and the Receiving Party shall not publish or otherwise disclose any Confidential Information to any Person for any reason or purpose whatsoever, or use any Confidential Information for its own purposes or for the benefit of any Person, without the prior written approval of the Disclosing Party. Without limiting the generality of the foregoing, each Party shall observe the same safeguards and precautions with regard to Confidential Information, which such Party observes with respect to its own information of the same or similar kind.

If the Receiving Party or any of its Associated Parties are requested or required to disclose any Confidential Information pursuant to a subpoena, court order, civil investigative demand or similar judicial process or other oral or written request issued by a court of competent jurisdiction or by an international, national, state or local governmental or regulatory body, the Receiving Party will provide the Disclosing Party with prompt written notice of any such request or requirement so that the Disclosing Party or any of its Associated Parties may seek an appropriate protective order or other appropriate remedy or waive compliance with the provisions of this Agreement. If such order or other remedy is not obtained, or the Disclosing Party waives compliance with the provisions of this Section 17.1(b), the Receiving Party or its Associated Parties, as the case may be, will disclose only that portion of the Confidential Information which it is advised by counsel that it is legally required to so disclose and will exercise reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the information so disclosed.

17.2 Associated Parties. Each Party agrees that it will make available Confidential Information received from the other Party to its own Associated Parties only on a need-to-know basis, and that all Persons to whom such Confidential Information is made available will be made aware of the confidential nature of such Confidential Information, and will be required to agree to hold such Confidential Information in confidence under terms substantially identical to the terms hereof. Notwithstanding the foregoing, a Receiving Party may provide any Confidential Information to any Governmental Authority having jurisdiction over or asserting a right to obtain such information, provided that (i) such Governmental Authority orders such Confidential Information be provided, and (ii) the Receiving Party promptly advises the Disclosing Party of any request for such information by such Governmental Authority and

cooperates in giving the Disclosing Party an opportunity to present objections, requests for limitation, and/or requests for confidentiality or other restrictions on disclosure or access, to such Governmental Authority.

17.3 Exceptions.

(a) Seller may, without violating this Article 17, disclose matters that are made confidential by this Agreement:

(i) to actual or prospective, Financing Parties, underwriters, contractors, suppliers, and others involved in construction, operation, and financing transactions and arrangements for Seller or its subsidiaries, Affiliates, or parent, if the disclosure is subject to a confidentiality agreement with the person, corporation, or other entity to whom the disclosure is being made;

(ii) to government officials and parties involved in any proceeding in which Seller is seeking a permit, certificate, or other regulatory approval or order necessary or appropriate to carry out this Agreement, but Seller shall make reasonable efforts to restrict public access to the information disclosed, by protective order or otherwise; to governmental officials or the public as required by any Law, regulation, or order, including without limitation laws or regulations requiring disclosure of financial information, information material to financial matters, and filing of financial reports, but Seller shall make reasonable efforts to restrict public access to the information disclosed, by protective order or otherwise; and/or

(iii) in litigation to enforce this Agreement or pursue any remedies granted to or reserved by Seller under this Agreement.

(b) Buyer may, without violating this Article 17, disclose matters that are made confidential by this Agreement:

(i) if required by Chapter 552 Texas Government Code or as a matter of law to those persons who are entitled to view such information;

(ii) to lenders, underwriters, accountants, auditors, bankers, and attorneys involved in financing transactions and arrangements for Buyer, and/or for any city or municipality that is a member of Buyer, provided that the disclosure is subject to a confidentiality agreement with the Person to whom the disclosure is being made to the extent permitted by Law;

(iii) to government officials or the public as required by any law, regulation, or order, including without limitation laws or regulations requiring disclosure of financial information, information material to financial matters, and filing of financial reports

(iv) between Buyer and its Participating Members; provided, however, such Participating Members are required to keep such information confidential to the extent permitted by Law; and

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(v) in litigation to enforce this Agreement or to pursue any remedies granted to or reserved by Buyer under this Agreement.

17.4 Remedies. In the event of a breach or threatened breach of the provisions of Section 17.1 by any Receiving Party (unless excused under the provisions of Section 17.3), the Disclosing Party shall be entitled to an injunction restraining such Party from such breach. Nothing contained herein shall be construed as prohibiting the Disclosing Party from pursuing any other remedies available at law or equity for such breach or threatened breach of this Agreement.

17.5 Exclusions. Confidential Information shall exclude information falling into any of the following categories:

(a) Information that is or becomes generally available to the public other than as a result of a disclosure by either Party in violation of this Agreement;

(b) Information that was already known by either Party on a non-confidential basis prior to this Agreement;

(c) Information that becomes available to either Party on a non-confidential basis from a source other than the other Party if such source was not known by the receiving Party to be subject to any prohibition against disclosing the information to such Party; or

(d) Information a Party is required to disclose in connection with any administrative or regulatory approval or filing process in connection with the conduct of its business.

ARTICLE 18 SELLER LIABILITY

Big Brown shall be severally liable to Buyer for the Products to be delivered from the Big Brown Facility to Buyer at the Delivery Point(s), including delivery of title thereto free and clear of all liens, security interests, claims, encumbrances, and adverse interests therein or thereto. Luminant Generation shall be severally liable to Buyer for the Products to be delivered from the Martin Lake Facility to Buyer at the Delivery Point(s), including delivery of title thereto free and clear of all liens, security interests, claims, encumbrances, and adverse interests therein or thereto. Oak Grove shall be severally liable to Buyer for the Products to be delivered from the Oak Grove Facility to Buyer at the Delivery Point(s), including delivery of title thereto free and clear of all liens, security interests, claims, encumbrances, and adverse interests therein or thereto.

ARTICLE 19 ASSIGNMENT

Neither Party shall assign this Agreement or its rights hereunder without the prior written

consent of the other Party, which consent shall not be unreasonably withheld or delayed; provided, however, either Party may, without the consent of the other Party, (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an Affiliate(s) of such Party which Affiliate's creditworthiness at the time of such assignment is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any Person or entity succeeding to all or substantially all of the assets of such transferring or assigning Party and such Person's creditworthiness at the time of such assignment is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request. For assignments pursuant to (ii) and (iii) above, the assigning Party shall be relieved from liability hereunder. Upon an assignment, the security as set forth in Article 9 shall be provided by Seller unless the Parties agree otherwise.

ARTICLE 20 GOVERNMENTAL CHARGES

20.1 Governmental Charges. Except as otherwise provided in this Article 20, Seller shall pay or cause to be paid all Governmental Charges on or with respect to this Agreement arising prior to the Delivery Point and Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product at and from the Delivery Point (other than ad valorem, excise, franchise, margin, employment taxes, income taxes, or both which are related to the sale of the Product or ownership of the Facilities (except as set forth in Section 20.2 below), and are, therefore, the responsibility of the Seller). In the event Seller is required by Law to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by Law to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the Law.

20.2 New Governmental Charges.

(a) **General.** If a New Governmental Charge is imposed upon or borne by the Facilities, excluding costs for Preexisting Environmental Commitments, Buyer's Prorata share of all such charges shall be paid by Buyer except as noted in Section 20.2(c). The Parties agree that it is in Seller's sole discretion to choose how Seller complies with any New Governmental Charge. For the avoidance of doubt, New Governmental Charges shall include, without limitation and in addition to any other New Governmental Charges, any costs associated with Carbon Remediation and Buyer shall be responsible for its percentage share.

(b) **Buyer's Costs.** If Buyer's Prorata share (at the time the New Governmental Charge is incurred with respect to the affected Facility) of any such New Governmental Charge incurred after October 10, 2007 is greater than the Materiality Threshold, Buyer shall be responsible for such Prorata share of such New Governmental Charge (as calculated in Section 20.2(d)) and such responsibility shall continue until the earlier of (i) the date such New

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Governmental Charge is no longer applicable, (ii) the date that capital or operating costs related to its remediation are no longer incurred by Seller, (iii) the Early Termination Date designated by Buyer under this Agreement due to a Seller Default, or (iv) the end of the Term

(c) Seller's Costs. In the event Seller incurs any Governmental Charges due to Seller's non-compliance with environmental laws existing (and as written) as of the Effective Date, Seller shall be responsible for such charges. Buyer is not required to pay, nor shall it be charged for any share of the charges, costs, or expenses for the Preexisting Environmental Commitments for the Facilities. The Preexisting Environmental Commitments for NOx and SO2 shall each be met by Seller or its Affiliates, as applicable, on the date in which the NOx or SO2 emission level has been posted on the Environmental Protection Agency's Clean Air Markets Division CEMS data website at <http://camddataandmaps.epa.gov/gdm/index.cfm> and such posted level is 20% below the 2005 NOx or SO2 emission level, as applicable, posted on such website. The Preexisting Environmental Commitments for mercury shall be met by Seller or its Affiliates, as applicable, on the date in which the mercury emission level has been posted on the Environmental Protection Agency's TRI Explorer website at <http://www.epa.gov/triexplorer/> and such posted level is 20% below the 2005 mercury emission level posted on such website.

(d) Calculation of New Governmental Charge. Any New Governmental Charge that Buyer is responsible for shall be offset by the value of Buyer's Prorata share of any Environmental Entitlements after the Effective Date with Buyer being responsible for a proportional net difference, if any. To the extent that the New Governmental Charges are capitalized by Seller over the lesser of (i) the reasonably estimated useful and economic life of the Facilities or (ii) the reasonably estimated useful and economic life of the improvements made as a result of the New Governmental Charges, then Buyer's Prorata share of the New Governmental Charges for any calendar year while this Agreement is in effect shall be based on Buyer's Prorata share of the straight-lined amortized cost for such year as so capitalized at the Capitalization Rate. Furthermore, (i) if controls or equipment are added to another facility located in Texas in order to comply with a New Governmental Charge and such controls or equipment benefit one or more of the Facilities with respect to compliance with a New Governmental Charge, Buyer shall be responsible for its percentage of the portion of the controls or equipment that are beneficial to the Facility(ies) and (ii) if controls or equipment are added to one of the Facilities in order to comply with a New Governmental Charge and such controls or equipment benefit other facilities with respect to compliance with a New Governmental Charge, Buyer shall only be responsible for its percentage of the portion of the controls or equipment that are beneficial to the Facility(ies).

ARTICLE 21 MISCELLANEOUS

21.1 Applicable Law. This Agreement is governed by and shall be construed under the Laws of the State of Texas excluding any conflict of laws rules. The Parties submit to the exclusive jurisdiction of the state and federal courts in Dallas County, Texas in connection with any litigation arising hereunder.

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21.2 Adequate Assurance. Article 9 of this Agreement sets forth the entirety of the agreement between the Parties regarding credit, collateral and adequate assurances. Except as expressly set forth in this Agreement, neither Party

(a) has or will have any obligation to post margin, provide letters of credit, pay deposits, make any other prepayments or provide any other financial assurances, in any form whatsoever, or

(b) will have reasonable grounds for insecurity with respect to the creditworthiness of a Party that is complying with the relevant provisions of this Agreement

(c) and all implied rights relating to financial assurances arising from Section 2-609 of the Uniform Commercial Code or case law applying similar doctrines, are hereby waived.

21.3 Counterparts. This Agreement may be executed in more than one counterpart, each of which shall be deemed to be an original, but all of which together shall constitute one and the same document.

21.4 Waiver. No waiver of any breach of the terms of this Agreement shall be effective unless such waiver is in writing and signed by the Party against whom such waiver is claimed. No waiver of any breach shall be deemed to be a waiver of any subsequent breach.

21.5 Evergreen Provision The Parties agree that if there is a significant material change in the market structure from the paradigm in effect, or as forecasted, on the Effective Date, the Parties agree that they will negotiate in good faith to amend this Agreement to take such new market structure into account to address operational differences (including scheduling, dispatch instructions and instructed backdowns, deliveries of Alternate Energy) between the market structure in effect just prior to the material change in market structure and the new market structure.

21.6 Modification. This Agreement, including any exhibits attached hereto, may only be modified by written agreement duly executed by each Party.

21.7 Severability. If any provision of this Agreement shall be determined to be unenforceable, void or otherwise contrary to Law, such condition shall in no manner operate to render any other provision of this Agreement unenforceable, void or contrary to Law, and this Agreement shall continue in force in accordance with the remaining terms and provisions hereof, unless such condition invalidates the purpose or intent of this Agreement. In the event that any of the provisions, or portions or applications thereof, of this Agreement are held unenforceable or invalid by any court of competent jurisdiction, Buyer and Seller shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this Agreement with a view toward effecting the purposes of this Agreement by replacing the provision that is unenforceable, void, or contrary to Law with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be unenforceable, void, or contrary to Law.

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21.8 Incorporation of Exhibits by Reference. All exhibits recited to be attached to this Agreement are incorporated by reference into this Agreement.

21.9 Entirety. It is the intention of the Parties that this Agreement shall contain all terms, conditions, and protections in any way related to, or arising out of, the sale and purchase of the Products as contemplated herein, and supersedes all prior agreements regarding the subject matter hereof, whether written or oral.

21.10 Captions, Titles and Headings. Captions, titles and headings used in this Agreement are for ease of reference only and do not constitute a part of this Agreement.

21.11 Attorneys' Fees. Pursuant to Section 271.150 of the Code, in any litigation to enforce the terms of the Agreement, the prevailing party is entitled to recover its reasonable and necessary attorneys' fees from the non-prevailing party.

21.12 Forward Contract. The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code.

21.13 Further Assurances. Each Party shall, from time to time, upon the written request of any other Party, execute and deliver such further instruments and documents as shall be necessary to perform its obligations hereunder. Without limiting the foregoing, Buyer agrees to cooperate in good faith in executing and delivering such further instruments and documents necessary in connection with the substitution of collateral and/or release of discharged collateral pursuant to Section 9.2 of this Agreement.

21.14 Survival. The confidentiality and audit provisions, indemnities, releases from liability, and limitations on liability or damages expressed in this Agreement shall, unless otherwise provided herein, survive without limitation the termination, cancellation or expiration of this Agreement, and shall apply whether in contract, equity, or at law. Notwithstanding the foregoing, the statute of limitations for bringing any action with respect to this Agreement or either Party's performance hereunder is not extended by the provisions of this Section 21.14.

21.15 Amendment. This Agreement contains the entire agreement between the Parties with respect to the matters herein and cannot be amended except by mutual written agreement. Guarantor, by execution of this Agreement acknowledges and agrees that it shall be bound by any and all amendments of this Agreement that are executed by Seller and Buyer, with or without notice to Guarantor, and such amendments shall not be construed in any way to diminish or to terminate its agreements with Seller under the Guaranty.

21.16 No Third Party Beneficiaries. This Agreement is intended only for the Parties' benefit. Nothing in this Agreement may be construed to create any duty to, any standard of care concerning, or any liability to, any Person not a Party to this Agreement. Except as specifically provided herein, no Person shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder, or both, except Buyer and Seller.

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in their respective names by their duly authorized officers.

CITIES AGGREGATION
POWER PROJECT, INC.

9/10/2008
Date

By: [Signature]
Name Printed: Say Dorey
Title: Chair

BIG BROWN POWER COMPANY LLC

9/10/08
Date

By: [Signature] JDS
Name Printed: STEPHEN KOPELITZ
Title: SR. VICE PRESIDENT

LUMINANT GENERATION COMPANY
LLC

9/10/08
Date

By: [Signature] JDS
Name Printed: STEPHEN KOPELITZ
Title: SR. VICE PRESIDENT

OAK GROVE MANAGEMENT COMPANY
LLC

9/10/08
Date

By: [Signature] JDS
Name Printed: STEPHEN KOPELITZ
Title: SR. VICE PRESIDENT

EXHIBIT (1)
MONTHLY ENERGY PRICE(S) AND EXPECTED MONTHLY QUANTITY(S)

DELIVERY MONTH	MONTHLY ENERGY PRICE (\$/MWh) ^A	EXPECTED MONTHLY QUANTITY* (MWh)	DELIVERY MONTH	MONTHLY ENERGY PRICE (\$/MWh) ^A	EXPECTED MONTHLY QUANTITY* (MWh)	DELIVERY MONTH	MONTHLY ENERGY PRICE (\$/MWh) ^A	EXPECTED MONTHLY QUANTITY* (MWh)	DELIVERY MONTH	MONTHLY ENERGY PRICE (\$/MWh) ^A	EXPECTED MONTHLY QUANTITY* (MWh)
January-09	\$21.20	100,440	January-15	\$25.31	100,440	January-21	\$30.23	100,440	January-27	\$36.09	100,440
February-09	\$21.20	90,720	February-15	\$25.31	90,720	February-21	\$30.23	90,720	February-27	\$36.09	90,720
March-09	\$21.20	100,440	March-15	\$25.31	100,440	March-21	\$30.23	100,440	March-27	\$36.09	100,440
April-09	\$21.20	97,200	April-15	\$25.31	97,200	April-21	\$30.23	97,200	April-27	\$36.09	97,200
May-09	\$21.20	100,440	May-15	\$25.31	100,440	May-21	\$30.23	100,440	May-27	\$36.09	100,440
June-09	\$21.20	97,200	June-15	\$25.31	97,200	June-21	\$30.23	97,200	June-27	\$36.09	97,200
July-09	\$21.20	100,440	July-15	\$25.31	100,440	July-21	\$30.23	100,440	July-27	\$36.09	100,440
August-09	\$21.20	100,440	August-15	\$25.31	100,440	August-21	\$30.23	100,440	August-27	\$36.09	100,440
September-09	\$21.20	97,200	September-15	\$25.31	97,200	September-21	\$30.23	97,200	September-27	\$36.09	97,200
October-09	\$21.20	100,440	October-15	\$25.31	100,440	October-21	\$30.23	100,440	October-27	\$36.09	100,440
November-09	\$21.20	97,200	November-15	\$25.31	97,200	November-21	\$30.23	97,200	November-27	\$36.09	97,200
December-09	\$21.20	100,440	December-15	\$25.31	100,440	December-21	\$30.23	100,440	December-27	\$36.09	100,440
January-10	\$21.84	100,440	January-16	\$26.07	100,440	January-22	\$31.13	100,440	January-28	\$37.17	100,440
February-10	\$21.84	90,720	February-16	\$26.07	93,960	February-22	\$31.13	90,720	February-28	\$37.17	93,960
March-10	\$21.84	100,440	March-16	\$26.07	100,440	March-22	\$31.13	100,440	March-28	\$37.17	100,440
April-10	\$21.84	97,200	April-16	\$26.07	97,200	April-22	\$31.13	97,200	April-28	\$37.17	97,200
May-10	\$21.84	100,440	May-16	\$26.07	100,440	May-22	\$31.13	100,440	May-28	\$37.17	100,440
June-10	\$21.84	97,200	June-16	\$26.07	97,200	June-22	\$31.13	97,200	June-28	\$37.17	97,200
July-10	\$21.84	100,440	July-16	\$26.07	100,440	July-22	\$31.13	100,440	July-28	\$37.17	100,440
August-10	\$21.84	100,440	August-16	\$26.07	100,440	August-22	\$31.13	100,440	August-28	\$37.17	100,440
September-10	\$21.84	97,200	September-16	\$26.07	97,200	September-22	\$31.13	97,200	September-28	\$37.17	97,200
October-10	\$21.84	100,440	October-16	\$26.07	100,440	October-22	\$31.13	100,440	October-28	\$37.17	100,440
November-10	\$21.84	97,200	November-16	\$26.07	97,200	November-22	\$31.13	97,200	November-28	\$37.17	97,200
December-10	\$21.84	100,440	December-16	\$26.07	100,440	December-22	\$31.13	100,440	December-28	\$37.17	100,440
January-11	\$22.49	100,440	January-17	\$26.86	100,440	January-23	\$32.07	100,440	January-29	\$38.29	100,440
February-11	\$22.49	90,720	February-17	\$26.86	90,720	February-23	\$32.07	90,720	February-29	\$38.29	90,720
March-11	\$22.49	100,440	March-17	\$26.86	100,440	March-23	\$32.07	100,440	March-29	\$38.29	100,440
April-11	\$22.49	97,200	April-17	\$26.86	97,200	April-23	\$32.07	97,200	April-29	\$38.29	97,200
May-11	\$22.49	100,440	May-17	\$26.86	100,440	May-23	\$32.07	100,440	May-29	\$38.29	100,440
June-11	\$22.49	97,200	June-17	\$26.86	97,200	June-23	\$32.07	97,200	June-29	\$38.29	97,200
July-11	\$22.49	100,440	July-17	\$26.86	100,440	July-23	\$32.07	100,440	July-29	\$38.29	100,440
August-11	\$22.49	100,440	August-17	\$26.86	100,440	August-23	\$32.07	100,440	August-29	\$38.29	100,440
September-11	\$22.49	97,200	September-17	\$26.86	97,200	September-23	\$32.07	97,200	September-29	\$38.29	97,200
October-11	\$22.49	100,440	October-17	\$26.86	100,440	October-23	\$32.07	100,440	October-29	\$38.29	100,440
November-11	\$22.49	97,200	November-17	\$26.86	97,200	November-23	\$32.07	97,200	November-29	\$38.29	97,200
December-11	\$22.49	100,440	December-17	\$26.86	100,440	December-23	\$32.07	100,440	December-29	\$38.29	100,440
January-12	\$23.17	100,440	January-18	\$27.66	100,440	January-24	\$33.03	100,440	January-30	\$39.44	100,440
February-12	\$23.17	93,960	February-18	\$27.66	90,720	February-24	\$33.03	93,960	February-30	\$39.44	90,720
March-12	\$23.17	100,440	March-18	\$27.66	100,440	March-24	\$33.03	100,440	March-30	\$39.44	100,440
April-12	\$23.17	97,200	April-18	\$27.66	97,200	April-24	\$33.03	97,200	April-30	\$39.44	97,200
May-12	\$23.17	100,440	May-18	\$27.66	100,440	May-24	\$33.03	100,440	May-30	\$39.44	100,440
June-12	\$23.17	97,200	June-18	\$27.66	97,200	June-24	\$33.03	97,200	June-30	\$39.44	97,200
July-12	\$23.17	100,440	July-18	\$27.66	100,440	July-24	\$33.03	100,440	July-30	\$39.44	100,440
August-12	\$23.17	100,440	August-18	\$27.66	100,440	August-24	\$33.03	100,440	August-30	\$39.44	100,440
September-12	\$23.17	97,200	September-18	\$27.66	97,200	September-24	\$33.03	97,200	September-30	\$39.44	97,200
October-12	\$23.17	100,440	October-18	\$27.66	100,440	October-24	\$33.03	100,440	October-30	\$39.44	100,440
November-12	\$23.17	97,200	November-18	\$27.66	97,200	November-24	\$33.03	97,200	November-30	\$39.44	97,200
December-12	\$23.17	100,440	December-18	\$27.66	100,440	December-24	\$33.03	100,440	December-30	\$39.44	100,440
January-13	\$23.86	100,440	January-19	\$28.49	100,440	January-25	\$34.02	100,440	January-31	\$40.62	100,440
February-13	\$23.86	90,720	February-19	\$28.49	90,720	February-25	\$34.02	90,720	February-31	\$40.62	90,720
March-13	\$23.86	100,440	March-19	\$28.49	100,440	March-25	\$34.02	100,440	March-31	\$40.62	100,440
April-13	\$23.86	97,200	April-19	\$28.49	97,200	April-25	\$34.02	97,200	April-31	\$40.62	97,200
May-13	\$23.86	100,440	May-19	\$28.49	100,440	May-25	\$34.02	100,440	May-31	\$40.62	100,440
June-13	\$23.86	97,200	June-19	\$28.49	97,200	June-25	\$34.02	97,200	June-31	\$40.62	97,200
July-13	\$23.86	100,440	July-19	\$28.49	100,440	July-25	\$34.02	100,440	July-31	\$40.62	100,440
August-13	\$23.86	100,440	August-19	\$28.49	100,440	August-25	\$34.02	100,440	August-31	\$40.62	100,440
September-13	\$23.86	97,200	September-19	\$28.49	97,200	September-25	\$34.02	97,200	September-31	\$40.62	97,200
October-13	\$23.86	100,440	October-19	\$28.49	100,440	October-25	\$34.02	100,440	October-31	\$40.62	100,440
November-13	\$23.86	97,200	November-19	\$28.49	97,200	November-25	\$34.02	97,200	November-31	\$40.62	97,200
December-13	\$23.86	100,440	December-19	\$28.49	100,440	December-25	\$34.02	100,440	December-31	\$40.62	100,440
January-14	\$24.58	100,440	January-20	\$29.35	100,440	January-26	\$35.04	100,440	January-32	\$41.84	100,440
February-14	\$24.58	90,720	February-20	\$29.35	93,960	February-26	\$35.04	90,720	February-32	\$41.84	93,960
March-14	\$24.58	100,440	March-20	\$29.35	100,440	March-26	\$35.04	100,440	March-32	\$41.84	100,440
April-14	\$24.58	97,200	April-20	\$29.35	97,200	April-26	\$35.04	97,200	April-32	\$41.84	97,200
May-14	\$24.58	100,440	May-20	\$29.35	100,440	May-26	\$35.04	100,440	May-32	\$41.84	100,440
June-14	\$24.58	97,200	June-20	\$29.35	97,200	June-26	\$35.04	97,200	June-32	\$41.84	97,200
July-14	\$24.58	100,440	July-20	\$29.35	100,440	July-26	\$35.04	100,440	July-32	\$41.84	100,440
August-14	\$24.58	100,440	August-20	\$29.35	100,440	August-26	\$35.04	100,440	August-32	\$41.84	100,440
September-14	\$24.58	97,200	September-20	\$29.35	97,200	September-26	\$35.04	97,200	September-32	\$41.84	97,200
October-14	\$24.58	100,440	October-20	\$29.35	100,440	October-26	\$35.04	100,440	October-32	\$41.84	100,440
November-14	\$24.58	97,200	November-20	\$29.35	97,200	November-26	\$35.04	97,200	November-32	\$41.84	97,200
December-14	\$24.58	100,440	December-20	\$29.35	100,440	December-26	\$35.04	100,440	December-32	\$41.84	100,440

* quantities (MWh) to be delivered / received forecast to decline on a ratable basis across all days within each respective Delivery Month

^A net of New Governmental Charges, if any

EXHIBIT (2)											
MONTHLY ENERGY PRICE(S) AND EXPECTED MONTHLY QUANTITY(S)											
DELIVERY MONTH	MONTHLY ENERGY PRICE (\$/MWh)*	EXPECTED MONTHLY QUANTITY* (MWh)	DELIVERY MONTH	MONTHLY ENERGY PRICE (\$/MWh)*	EXPECTED MONTHLY QUANTITY* (MWh)	DELIVERY MONTH	MONTHLY ENERGY PRICE (\$/MWh)*	EXPECTED MONTHLY QUANTITY* (MWh)	DELIVERY MONTH	MONTHLY ENERGY PRICE (\$/MWh)*	EXPECTED MONTHLY QUANTITY* (MWh)
January-09	\$21.20	100,440	January-15	\$25.31	100,440	January-21	\$30.23	100,440	January-27	\$36.09	100,440
February-09	\$21.20	90,720	February-15	\$25.31	90,720	February-21	\$30.23	90,720	February-27	\$36.09	90,720
March-09	\$21.20	100,440	March-15	\$25.31	100,440	March-21	\$30.23	100,440	March-27	\$36.09	100,440
April-09	\$21.20	97,200	April-15	\$25.31	97,200	April-21	\$30.23	97,200	April-27	\$36.09	97,200
May-09	\$21.20	100,440	May-15	\$25.31	100,440	May-21	\$30.23	100,440	May-27	\$36.09	100,440
June-09	\$21.20	97,200	June-15	\$25.31	97,200	June-21	\$30.23	97,200	June-27	\$36.09	97,200
July-09	\$21.20	100,440	July-15	\$25.31	100,440	July-21	\$30.23	100,440	July-27	\$36.09	100,440
August-09	\$21.20	100,440	August-15	\$25.31	100,440	August-21	\$30.23	100,440	August-27	\$36.09	100,440
September-09	\$21.20	97,200	September-15	\$25.31	97,200	September-21	\$30.23	97,200	September-27	\$36.09	97,200
October-09	\$21.20	100,440	October-15	\$25.31	100,440	October-21	\$30.23	100,440	October-27	\$36.09	100,440
November-09	\$21.20	97,200	November-15	\$25.31	97,200	November-21	\$30.23	97,200	November-27	\$36.09	97,200
December-09	\$21.20	100,440	December-15	\$25.31	100,440	December-21	\$30.23	100,440	December-27	\$36.09	100,440
January-10	\$21.84	100,440	January-16	\$26.07	100,440	January-22	\$31.13	100,440	January-28	\$37.17	100,440
February-10	\$21.84	90,720	February-16	\$26.07	93,960	February-22	\$31.13	90,720	February-28	\$37.17	93,960
March-10	\$21.84	100,440	March-16	\$26.07	100,440	March-22	\$31.13	100,440	March-28	\$37.17	100,440
April-10	\$21.84	97,200	April-16	\$26.07	97,200	April-22	\$31.13	97,200	April-28	\$37.17	97,200
May-10	\$21.84	100,440	May-16	\$26.07	100,440	May-22	\$31.13	100,440	May-28	\$37.17	100,440
June-10	\$21.84	97,200	June-16	\$26.07	97,200	June-22	\$31.13	97,200	June-28	\$37.17	97,200
July-10	\$21.84	100,440	July-16	\$26.07	100,440	July-22	\$31.13	100,440	July-28	\$37.17	100,440
August-10	\$21.84	100,440	August-16	\$26.07	100,440	August-22	\$31.13	100,440	August-28	\$37.17	100,440
September-10	\$21.84	97,200	September-16	\$26.07	97,200	September-22	\$31.13	97,200	September-28	\$37.17	97,200
October-10	\$21.84	100,440	October-16	\$26.07	100,440	October-22	\$31.13	100,440	October-28	\$37.17	100,440
November-10	\$21.84	97,200	November-16	\$26.07	97,200	November-22	\$31.13	97,200	November-28	\$37.17	97,200
December-10	\$21.84	100,440	December-16	\$26.07	100,440	December-22	\$31.13	100,440	December-28	\$37.17	100,440
January-11	\$22.49	100,440	January-17	\$26.86	100,440	January-23	\$32.07	100,440	January-29	\$38.29	100,440
February-11	\$22.49	90,720	February-17	\$26.86	90,720	February-23	\$32.07	90,720	February-29	\$38.29	90,720
March-11	\$22.49	100,440	March-17	\$26.86	100,440	March-23	\$32.07	100,440	March-29	\$38.29	100,440
April-11	\$22.49	97,200	April-17	\$26.86	97,200	April-23	\$32.07	97,200	April-29	\$38.29	97,200
May-11	\$22.49	100,440	May-17	\$26.86	100,440	May-23	\$32.07	100,440	May-29	\$38.29	100,440
June-11	\$22.49	97,200	June-17	\$26.86	97,200	June-23	\$32.07	97,200	June-29	\$38.29	97,200
July-11	\$22.49	100,440	July-17	\$26.86	100,440	July-23	\$32.07	100,440	July-29	\$38.29	100,440
August-11	\$22.49	100,440	August-17	\$26.86	100,440	August-23	\$32.07	100,440	August-29	\$38.29	100,440
September-11	\$22.49	97,200	September-17	\$26.86	97,200	September-23	\$32.07	97,200	September-29	\$38.29	97,200
October-11	\$22.49	100,440	October-17	\$26.86	100,440	October-23	\$32.07	100,440	October-29	\$38.29	100,440
November-11	\$22.49	97,200	November-17	\$26.86	97,200	November-23	\$32.07	97,200	November-29	\$38.29	97,200
December-11	\$22.49	100,440	December-17	\$26.86	100,440	December-23	\$32.07	100,440	December-29	\$38.29	100,440
January-12	\$23.17	100,440	January-18	\$27.66	100,440	January-24	\$33.03	100,440	January-30	\$39.44	100,440
February-12	\$23.17	93,960	February-18	\$27.66	90,720	February-24	\$33.03	93,960	February-30	\$39.44	90,720
March-12	\$23.17	100,440	March-18	\$27.66	100,440	March-24	\$33.03	100,440	March-30	\$39.44	100,440
April-12	\$23.17	97,200	April-18	\$27.66	97,200	April-24	\$33.03	97,200	April-30	\$39.44	97,200
May-12	\$23.17	100,440	May-18	\$27.66	100,440	May-24	\$33.03	100,440	May-30	\$39.44	100,440
June-12	\$23.17	97,200	June-18	\$27.66	97,200	June-24	\$33.03	97,200	June-30	\$39.44	97,200
July-12	\$23.17	100,440	July-18	\$27.66	100,440	July-24	\$33.03	100,440	July-30	\$39.44	100,440
August-12	\$23.17	100,440	August-18	\$27.66	100,440	August-24	\$33.03	100,440	August-30	\$39.44	100,440
September-12	\$23.17	97,200	September-18	\$27.66	97,200	September-24	\$33.03	97,200	September-30	\$39.44	97,200
October-12	\$23.17	100,440	October-18	\$27.66	100,440	October-24	\$33.03	100,440	October-30	\$39.44	100,440
November-12	\$23.17	97,200	November-18	\$27.66	97,200	November-24	\$33.03	97,200	November-30	\$39.44	97,200
December-12	\$23.17	100,440	December-18	\$27.66	100,440	December-24	\$33.03	100,440	December-30	\$39.44	100,440
January-13	\$23.86	100,440	January-19	\$28.49	100,440	January-25	\$34.02	100,440	January-31	\$40.62	100,440
February-13	\$23.86	90,720	February-19	\$28.49	90,720	February-25	\$34.02	90,720	February-31	\$40.62	90,720
March-13	\$23.86	100,440	March-19	\$28.49	100,440	March-25	\$34.02	100,440	March-31	\$40.62	100,440
April-13	\$23.86	97,200	April-19	\$28.49	97,200	April-25	\$34.02	97,200	April-31	\$40.62	97,200
May-13	\$23.86	100,440	May-19	\$28.49	100,440	May-25	\$34.02	100,440	May-31	\$40.62	100,440
June-13	\$23.86	97,200	June-19	\$28.49	97,200	June-25	\$34.02	97,200	June-31	\$40.62	97,200
July-13	\$23.86	100,440	July-19	\$28.49	100,440	July-25	\$34.02	100,440	July-31	\$40.62	100,440
August-13	\$23.86	100,440	August-19	\$28.49	100,440	August-25	\$34.02	100,440	August-31	\$40.62	100,440
September-13	\$23.86	97,200	September-19	\$28.49	97,200	September-25	\$34.02	97,200	September-31	\$40.62	97,200
October-13	\$23.86	100,440	October-19	\$28.49	100,440	October-25	\$34.02	100,440	October-31	\$40.62	100,440
November-13	\$23.86	97,200	November-19	\$28.49	97,200	November-25	\$34.02	97,200	November-31	\$40.62	97,200
December-13	\$23.86	100,440	December-19	\$28.49	100,440	December-25	\$34.02	100,440	December-31	\$40.62	100,440
January-14	\$24.58	100,440	January-20	\$29.35	100,440	January-26	\$35.04	100,440	January-32	\$41.84	100,440
February-14	\$24.58	90,720	February-20	\$29.35	93,960	February-26	\$35.04	90,720	February-32	\$41.84	93,960
March-14	\$24.58	100,440	March-20	\$29.35	100,440	March-26	\$35.04	100,440	March-32	\$41.84	100,440
April-14	\$24.58	97,200	April-20	\$29.35	97,200	April-26	\$35.04	97,200	April-32	\$41.84	97,200
May-14	\$24.58	100,440	May-20	\$29.35	100,440	May-26	\$35.04	100,440	May-32	\$41.84	100,440
June-14	\$24.58	97,200	June-20	\$29.35	97,200	June-26	\$35.04	97,200	June-32	\$41.84	97,200
July-14	\$24.58	100,440	July-20	\$29.35	100,440	July-26	\$35.04	100,440	July-32	\$41.84	100,440
August-14	\$24.58	100,440	August-20	\$29.35	100,440	August-26	\$35.04	100,440	August-32	\$41.84	100,440
September-14	\$24.58	97,200	September-20	\$29.35	97,200	September-26	\$35.04	97,200	September-32	\$41.84	97,200
October-14	\$24.58	100,440	October-20	\$29.35	100,440	October-26	\$35.04	100,440	October-32	\$41.84	100,440
November-14	\$24.58	97,200	November-20	\$29.35	97,200	November-26	\$35.04	97,200	November-32	\$41.84	97,200
December-14	\$24.58	100,440	December-20	\$29.35	100,440	December-26	\$35.04	100,440	December-32	\$41.84	100,440

* quantities (MWh) to be delivered / received forecast to decline on a retable basis across all days within each respective Delivery Month

* net of New Governmental Charges, if any

EXHIBIT (3)
EARNED PORTION OF THE CAPACITY PREPAYMENT

DELIVERY MONTH	EARNED* PORTION OF THE CAPACITY PREPAYMENT	DELIVERY MONTH	EARNED* PORTION OF THE CAPACITY PREPAYMENT	DELIVERY MONTH	EARNED* PORTION OF THE CAPACITY PREPAYMENT	DELIVERY MONTH	EARNED* PORTION OF THE CAPACITY PREPAYMENT
January-09	\$1,614,583	January-15	\$1,614,583	January-21	\$1,614,583	January-27	\$1,614,583
February-09	\$1,614,583	February-15	\$1,614,583	February-21	\$1,614,583	February-27	\$1,614,583
March-09	\$1,614,583	March-15	\$1,614,583	March-21	\$1,614,583	March-27	\$1,614,583
April-09	\$1,614,583	April-15	\$1,614,583	April-21	\$1,614,583	April-27	\$1,614,583
May-09	\$1,614,583	May-15	\$1,614,583	May-21	\$1,614,583	May-27	\$1,614,583
June-09	\$1,614,583	June-15	\$1,614,583	June-21	\$1,614,583	June-27	\$1,614,583
July-09	\$1,614,583	July-15	\$1,614,583	July-21	\$1,614,583	July-27	\$1,614,583
August-09	\$1,614,583	August-15	\$1,614,583	August-21	\$1,614,583	August-27	\$1,614,583
September-09	\$1,614,583	September-15	\$1,614,583	September-21	\$1,614,583	September-27	\$1,614,583
October-09	\$1,614,583	October-15	\$1,614,583	October-21	\$1,614,583	October-27	\$1,614,583
November-09	\$1,614,583	November-15	\$1,614,583	November-21	\$1,614,583	November-27	\$1,614,583
December-09	\$1,614,583	December-15	\$1,614,583	December-21	\$1,614,583	December-27	\$1,614,583
January-10	\$1,614,583	January-16	\$1,614,583	January-22	\$1,614,583	January-28	\$1,614,583
February-10	\$1,614,583	February-16	\$1,614,583	February-22	\$1,614,583	February-28	\$1,614,583
March-10	\$1,614,583	March-16	\$1,614,583	March-22	\$1,614,583	March-28	\$1,614,583
April-10	\$1,614,583	April-16	\$1,614,583	April-22	\$1,614,583	April-28	\$1,614,583
May-10	\$1,614,583	May-16	\$1,614,583	May-22	\$1,614,583	May-28	\$1,614,583
June-10	\$1,614,583	June-16	\$1,614,583	June-22	\$1,614,583	June-28	\$1,614,583
July-10	\$1,614,583	July-16	\$1,614,583	July-22	\$1,614,583	July-28	\$1,614,583
August-10	\$1,614,583	August-16	\$1,614,583	August-22	\$1,614,583	August-28	\$1,614,583
September-10	\$1,614,583	September-16	\$1,614,583	September-22	\$1,614,583	September-28	\$1,614,583
October-10	\$1,614,583	October-16	\$1,614,583	October-22	\$1,614,583	October-28	\$1,614,583
November-10	\$1,614,583	November-16	\$1,614,583	November-22	\$1,614,583	November-28	\$1,614,583
December-10	\$1,614,583	December-16	\$1,614,583	December-22	\$1,614,583	December-28	\$1,614,583
January-11	\$1,614,583	January-17	\$1,614,583	January-23	\$1,614,583	January-29	\$1,614,583
February-11	\$1,614,583	February-17	\$1,614,583	February-23	\$1,614,583	February-29	\$1,614,583
March-11	\$1,614,583	March-17	\$1,614,583	March-23	\$1,614,583	March-29	\$1,614,583
April-11	\$1,614,583	April-17	\$1,614,583	April-23	\$1,614,583	April-29	\$1,614,583
May-11	\$1,614,583	May-17	\$1,614,583	May-23	\$1,614,583	May-29	\$1,614,583
June-11	\$1,614,583	June-17	\$1,614,583	June-23	\$1,614,583	June-29	\$1,614,583
July-11	\$1,614,583	July-17	\$1,614,583	July-23	\$1,614,583	July-29	\$1,614,583
August-11	\$1,614,583	August-17	\$1,614,583	August-23	\$1,614,583	August-29	\$1,614,583
September-11	\$1,614,583	September-17	\$1,614,583	September-23	\$1,614,583	September-29	\$1,614,583
October-11	\$1,614,583	October-17	\$1,614,583	October-23	\$1,614,583	October-29	\$1,614,583
November-11	\$1,614,583	November-17	\$1,614,583	November-23	\$1,614,583	November-29	\$1,614,583
December-11	\$1,614,583	December-17	\$1,614,583	December-23	\$1,614,583	December-29	\$1,614,583
January-12	\$1,614,583	January-18	\$1,614,583	January-24	\$1,614,583	January-30	\$1,614,583
February-12	\$1,614,583	February-18	\$1,614,583	February-24	\$1,614,583	February-30	\$1,614,583
March-12	\$1,614,583	March-18	\$1,614,583	March-24	\$1,614,583	March-30	\$1,614,583
April-12	\$1,614,583	April-18	\$1,614,583	April-24	\$1,614,583	April-30	\$1,614,583
May-12	\$1,614,583	May-18	\$1,614,583	May-24	\$1,614,583	May-30	\$1,614,583
June-12	\$1,614,583	June-18	\$1,614,583	June-24	\$1,614,583	June-30	\$1,614,583
July-12	\$1,614,583	July-18	\$1,614,583	July-24	\$1,614,583	July-30	\$1,614,583
August-12	\$1,614,583	August-18	\$1,614,583	August-24	\$1,614,583	August-30	\$1,614,583
September-12	\$1,614,583	September-18	\$1,614,583	September-24	\$1,614,583	September-30	\$1,614,583
October-12	\$1,614,583	October-18	\$1,614,583	October-24	\$1,614,583	October-30	\$1,614,583
November-12	\$1,614,583	November-18	\$1,614,583	November-24	\$1,614,583	November-30	\$1,614,583
December-12	\$1,614,583	December-18	\$1,614,583	December-24	\$1,614,583	December-30	\$1,614,583
January-13	\$1,614,583	January-19	\$1,614,583	January-25	\$1,614,583	January-31	\$1,614,583
February-13	\$1,614,583	February-19	\$1,614,583	February-25	\$1,614,583	February-31	\$1,614,583
March-13	\$1,614,583	March-19	\$1,614,583	March-25	\$1,614,583	March-31	\$1,614,583
April-13	\$1,614,583	April-19	\$1,614,583	April-25	\$1,614,583	April-31	\$1,614,583
May-13	\$1,614,583	May-19	\$1,614,583	May-25	\$1,614,583	May-31	\$1,614,583
June-13	\$1,614,583	June-19	\$1,614,583	June-25	\$1,614,583	June-31	\$1,614,583
July-13	\$1,614,583	July-19	\$1,614,583	July-25	\$1,614,583	July-31	\$1,614,583
August-13	\$1,614,583	August-19	\$1,614,583	August-25	\$1,614,583	August-31	\$1,614,583
September-13	\$1,614,583	September-19	\$1,614,583	September-25	\$1,614,583	September-31	\$1,614,583
October-13	\$1,614,583	October-19	\$1,614,583	October-25	\$1,614,583	October-31	\$1,614,583
November-13	\$1,614,583	November-19	\$1,614,583	November-25	\$1,614,583	November-31	\$1,614,583
December-13	\$1,614,583	December-19	\$1,614,583	December-25	\$1,614,583	December-31	\$1,614,583
January-14	\$1,614,583	January-20	\$1,614,583	January-26	\$1,614,583	January-32	\$1,614,583
February-14	\$1,614,583	February-20	\$1,614,583	February-26	\$1,614,583	February-32	\$1,614,583
March-14	\$1,614,583	March-20	\$1,614,583	March-26	\$1,614,583	March-32	\$1,614,583
April-14	\$1,614,583	April-20	\$1,614,583	April-26	\$1,614,583	April-32	\$1,614,583
May-14	\$1,614,583	May-20	\$1,614,583	May-26	\$1,614,583	May-32	\$1,614,583
June-14	\$1,614,583	June-20	\$1,614,583	June-26	\$1,614,583	June-32	\$1,614,583
July-14	\$1,614,583	July-20	\$1,614,583	July-26	\$1,614,583	July-32	\$1,614,583
August-14	\$1,614,583	August-20	\$1,614,583	August-26	\$1,614,583	August-32	\$1,614,583
September-14	\$1,614,583	September-20	\$1,614,583	September-26	\$1,614,583	September-32	\$1,614,583
October-14	\$1,614,583	October-20	\$1,614,583	October-26	\$1,614,583	October-32	\$1,614,583
November-14	\$1,614,583	November-20	\$1,614,583	November-26	\$1,614,583	November-32	\$1,614,583
December-14	\$1,614,583	December-20	\$1,614,583	December-26	\$1,614,583	December-32	\$1,614,583

* amounts deemed to decline on a ratable basis across all days within each respective Delivery Month

EXHIBIT 4

ACCESSION AGREEMENT

THIS ACCESSION AGREEMENT (this "Agreement"), dated as of December 23, 2008, is entered into by CITIES AGGREGATION POWER PROJECT, INC., a political subdivision corporation incorporated in the State of Texas, as an Additional Secured Party (as defined below), and acknowledged by TEXAS COMPETITIVE ELECTRIC HOLDINGS COMPANY LLC, a Delaware limited liability company (the "Borrower"), and CITIBANK, N.A. ("Citibank"), in its capacity as Collateral Agent for the Secured Parties, under the Intercreditor Agreement (as defined below).

Reference is made to that certain Collateral Agency and Intercreditor Agreement (as amended, modified, restated or supplemented from time to time, the "Intercreditor Agreement"), dated as of October 10, 2007, by and among the Borrower, Energy Future Competitive Holding Company, a Texas Corporation ("US Holdings"), the Subsidiary Guarantors party thereto from time to time, the Collateral Agent, the Secured Commodity Hedge Counterparties, and certain other Persons party thereto from time to time. Capitalized terms used herein without definition shall have the meaning assigned to them in the Intercreditor Agreement.

Pursuant to Section 5.6 of the Intercreditor Agreement, the Borrower may designate under the Intercreditor Agreement additional obligations as Secured Obligations on the terms and conditions set forth therein. The Intercreditor Agreement requires that any holder of additional obligations that are designated as Secured Obligations must become a party to the Intercreditor Agreement by executing and delivering this Agreement.

The undersigned is entering into this Agreement pursuant to Section 5.6 of the Intercreditor Agreement in order to become a Secured Party under the Intercreditor Agreement and the Security Documents, and to benefit from the Collateral under and in accordance with the terms of the Intercreditor Agreement and the Security Documents (an "Additional Secured Party").

The undersigned is a Secured Commodity Hedge Counterparty under the Purchase Power Agreement dated the 10th day of September, 2008, and stipulated to be a Secured Commodity Hedge and Power Sales Agreement, executed between Big Brown Power Company LLC, Oak Grove Management Company LLC, and Luminant Generation Company LLC, as Seller and Facility Owners, and Cities Aggregation Power Project, Inc., as Buyer, (the "Additional Document").

Pursuant to Section 5.6, attached hereto as Annex 1 is a copy of the certificate to be delivered by a Responsible Officer of the Borrower in accordance with Section 5.6(b)(1) of the Intercreditor Agreement.

The Additional Secured Party hereby becomes a Secured Party as a Secured Commodity Hedge Counterparty.

The Additional Secured Party hereby agrees for the benefit of the Collateral Agent and

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the Secured Parties as follows:

The Additional Secured Party hereby acknowledges, agrees and confirms that, by its execution of this Agreement, the Additional Secured Party will be deemed to be a party to the Intercreditor Agreement, and, from and after the date hereof, shall have all of the obligations of a Secured Commodity Hedge Counterparty thereunder as if it had executed the Intercreditor Agreement. The Additional Secured Party hereby ratifies, as of the date hereof, and accedes to and agrees to be bound by all of the terms, provisions and conditions applicable to a Secured Party and a Secured Commodity Hedge Counterparty contained in the Intercreditor Agreement and the other Security Documents.

To the extent the Additional Secured Party is an agent or trustee for one or more Secured Parties, the Additional Secured Party acknowledges that it has the authority to bind such Secured Parties to the Intercreditor Agreement and such Secured Parties are hereby bound by the terms and conditions of the Intercreditor Agreement. The Additional Secured Party hereby agrees (on behalf of itself and any Secured Party claiming through it) to comply with the terms of the Intercreditor Agreement.

As of the date hereof, Schedule 1 sets forth the "*Floor Amount*" of the Additional Secured Party.

The address of the Additional Secured Party (and any Secured Debt Representative for such Additional Secured Party) for purposes of all notices and other communications is _____, Attention of _____ (Facsimile No. _____, electronic mail address: _____).

The amount of the obligations incurred by the Borrower or the applicable Subsidiary Guarantor under the Additional Document are as provided in the Additional Document.

This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which when taken together shall constitute one contract.

THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED UNDER, THE LAWS OF THE STATE OF NEW YORK.

IN WITNESS WHEREOF, the Additional Secured Party has caused this Accession Agreement to be duly executed by its authorized representative, and each of the Borrower and the Collateral Agent have caused the same to be accepted by its authorized representative, as of the day and year above written.

CITIES AGGREGATION POWER PROJECT, INC.

By: _____

Name:

Title:

Acknowledged:

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TEXAS ELECTRIC HOLDINGS COMPANY LLC

By: _____

Name:

Title:

Acknowledged and accepted:

CITIBANK, N.A., as Collateral Agent

By: _____

Name:

Title:

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ANNEX 1

Borrower's Certificate/New Debt Notice

_____, 200_

Dear _____:

Luminant Generation Company LLC ("Luminant Generation"), Big Brown Power Company LLC ("Big Brown") and Oak Grove Management Company LLC ("Oak Grove") (Luminant Generation, Big Brown and Oak Grove collectively referred to as "Subsidiary Guarantor") have entered into an additional Secured Commodity Hedge and Power Sales Agreement, and that such Additional Obligations will be Secured Obligations and are permitted (if addressed therein, or, otherwise, not prohibited) by the terms of the Credit Agreement and by the terms of the other applicable Financing Documents to be incurred by the relevant Loan Party and secured by a First Lien equally and ratably with all previously existing and future Security Obligations.

Sincerely,

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_____, 200__

Dear _____:

The new Secured Debt Representative (Secured Commodity Hedge Counterparty) is Cities Aggregation Power Project, Inc., 816 Congress, Suite 1900, Austin, Texas 78701.

Sincerely,

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SCHEDULE I

Floor Amount

The Floor Amount shall be \$0.

EXHIBIT 5

SELLER'S FORM OF GUARANTY

GUARANTY

This Guaranty is executed on this _____ day of _____, 2008, by Texas Competitive Electric Holdings Company LLC, a limited liability company organized and existing under the laws of the State of Delaware ("**Guarantor**"), for the benefit of Cities Aggregation Power Project, Inc., a political subdivision corporation incorporated in the State of Texas, its successors and assigns ("**Counterparty**"), and is as follows:

BACKGROUND

Big Brown Power Company, LLC, Oak Grove Management Company, LLC, and Luminant Generation Company, LLC, and their respective successors and assigns (collectively called the "**Companies**", and individually as a "**Company**") have executed and entered into that certain Power Purchase Agreement dated September 10, 2008 ("**Power Purchase Agreement**").

The Companies are Subsidiary Guarantors under that certain Collateral Agency and Intercreditor Agreement dated as of October 10, 2007, by and among the Guarantor herein, Energy Future Competitive Holding Company, various other Subsidiary Guarantors named therein, Citibank, N.A. as Collateral Agent for creditors, various creditors therein named, and Secured Commodity Hedge Counterparties.

Pursuant to Section 5.6 of the Intercreditor Agreement, Guarantor may designate under the Intercreditor Agreement additional obligations, including guaranties and Secured Commodity and Power Sales Agreements, as Secured Obligations.

Pursuant to the Power Purchase Agreement (i) Counterparty has extended \$465,000,000.00 to the Companies, for the benefit of the Companies and Guarantor, (ii) the Companies have agreed to provide Products, as therein defined, for the Term at predetermined rates to Counterparty, and (iii) the Companies have agreed to certain financial obligations to Counterparty as therein provided ("**Obligations**").

The Companies are subsidiaries of Guarantor. Guarantor and the Companies have stipulated that: (i) the said Power Purchase Agreement is a Secured Commodity Hedge and Power Sales Agreement under the Intercreditor Agreement, and (ii) Counterparty is a Secured Commodity Hedge Counterparty under the Intercreditor Agreement, entitled to a first lien on the Collateral named therein and in other documents referenced therein that evidence and secure the indebtedness of Guarantor on a *pari passu* basis with other creditors, as same may from time to time be renewed, extended, modified, amended, refinanced, or both.

AGREEMENT

In order to induce Counterparty to extend the sum of \$465,000,000.00 as provided in the Power Purchase Agreement, Guarantor, intending to be legally bound, hereby agrees as follows:

Guarantor hereby irrevocably and unconditionally guarantees the punctual payment when due of (i) all Obligations of the Companies to Counterparty now or hereafter existing or arising in connection with Power Purchase Agreement, (ii) interest as set forth in the Power Purchase Agreement, if any, on such Obligations, and (iii) any and all expenses (including, but not limited to, attorneys' fees and costs associated with enforcement of this Agreement) reasonably incurred by Counterparty in enforcing its rights under this Guaranty; provided, that the Guarantor shall not be liable for any expenses of Counterparty if no payment under this Guaranty is due and Guarantor's liability hereunder shall be limited to the amount calculated in accordance with Section 9.3 of the Power Purchase Agreement (the "Guaranteed Amount"). This Guaranty is a guaranty of payment and not merely of collection. This Guaranty is a continuing guaranty of payment when any amount is owing or when the Power Purchase Agreement is breached, without regard to whether such payment obligation is contingent or absolute, liquidated or unliquidated, or whether recovery may be or has become barred by any statute of limitations or otherwise may be unenforceable. The Guarantor's obligation to make a guarantee payment may be satisfied by payment in full of the required amounts by the Guarantor or by causing the Companies to pay such amounts to Counterparty.

The obligations of Guarantor hereunder are independent of the Obligations of the Companies. The liability of Guarantor hereunder is independent of any security for the Obligations of the Companies to Counterparty and is not affected or impaired by (a) any dissolution, reorganization, or insolvency of one or more of the Companies, or (b) any payment to Counterparty by one or more of the Companies that is subsequently returned to one or more of said Companies pursuant to court order in any bankruptcy or other debtor-relief proceeding, or (c) any insurance that may be available to cover any loss. Guarantor waives any right to the deferral or modification of Guarantor's obligations hereunder by virtue of any debtor-relief proceeding.

The obligations of the Companies to Counterparty under the Power Purchase Agreement that are guaranteed by Guarantor, subject to the Guaranteed Amount, under this Agreement specifically include, but are not limited to:

1. The payment of any credit for Capacity Payment due to Counterparty under Section 4.2(a) of the Power Purchase Agreement;
2. Amounts due to Counterparty by one or more of the Companies on account of a Seller Failure under Section 3.4 of the Power Purchase Agreement;
3. Amounts due to Counterparty by one or more of the Companies for additional charges incurred by Counterparty as a result of failure to submit or confirm a schedule or Energy Trade as required under Section 7.3 of the Power Purchase Agreement;

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4. Interest charges payable to Counterparty pursuant to Section 8.1(b) of the Power Purchase Agreement;
5. Amounts due to Counterparty under Section 8.4 of the Power Purchase Agreement as a result of an audit;
6. Amounts due to Counterparty as a result of a Seller Default under Article 10 of the Power Purchase Agreement;
7. Amounts due to Counterparty for any Buyer Termination Payment under Article 12 of the Power Purchase Agreement; and
8. Amounts due to Counterparty by one or more of the Companies with respect to indemnities and duties to defend and hold harmless set forth in Section 13.1 and Section 13.2 of the Power Purchase Agreement, limited, however as set forth in Section 13.4 of the Power Purchase Agreement.

The liability of the Guarantor under this Guaranty shall be unconditional irrespective of (i) any lack of enforceability of any Obligations, (ii) any change of the time, manner or place of payment, or any other term, of any Obligations (including renewals, extensions, modifications, and amendments thereof, regardless of whether or not Guarantor has agreed to or approved the terms of same), (iii) any law, regulation or order of any jurisdiction affecting any term of any Obligations or Counterparty's rights with respect thereto, (iv) the insolvency, receivership, reorganization or bankruptcy of one or more of the Companies, (v) the merger or consolidation of one or more of the Companies with or into another entity, the loss of the Company's separate legal identity or the cessation of the Company's existence, or (vi) defenses that one or more of the Companies may have to such Obligations (other than the defense of payment). Except as specifically provided for herein, the Guarantor waives promptness, diligence, and notices with respect to any Obligations in this Guaranty and any requirement that Counterparty exhaust any right or remedy or take any action against one or more of the Companies. In the event that any payment by one or more of the Companies in respect of any Obligations is rescinded or recovered from Counterparty as a preference or fraudulent transfer under the Federal Bankruptcy Code, or any applicable state law, the Guarantor shall remain liable hereunder in respect to such Obligations as if such payment had not been made.

Guarantor waives, to the fullest extent permitted by law, the benefit of any statute of limitations affecting its liability under this Guaranty. Guarantor waives any right to require Counterparty to (i) proceed against the Companies, (ii) proceed against or exhaust any security held from the Companies or any other party acting under a separate agreement, or (iii) pursue any other remedy available to Counterparty. Guarantor waives any defense based on or arising out of any defense of the Companies other than payment in full of the amount(s) owed or full and satisfactory performance of obligations of the Companies under the Power Purchase Agreement, including without limitation any defense based on or arising out of the disability of the Companies, the unenforceability of the indebtedness from any cause, or the cessation from any cause of the liability of the Companies other than payment in full of the amount(s) owed or full and satisfactory performance of the obligations of the Companies. Counterparty may, at its

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election, foreclose on any security held by Counterparty, whether or not the means of foreclosure is commercially reasonable, or exercise any other right or remedy available to Counterparty without affecting or impairing in any way the liability of Guarantor under this Guaranty, except to the extent the amount(s) owed to Counterparty by the Companies have been paid. Guarantor assumes all responsibility for keeping itself informed of the financial condition of the Companies and all other factors affecting the risks and liability assumed by Guarantor hereunder, and Counterparty shall have no duty to advise Guarantor of information known to it regarding such risks.

This Guaranty shall remain in full force and effect until the obligations of the Companies to Counterparty under the Power Purchase Agreement have been satisfied.

Upon failure of one or more of the Companies to perform under the Power Purchase Agreement, Counterparty may provide Guarantor with a written demand for payment, but the failure to provide Guarantor with a written demand shall not extinguish the guaranty herein made. If written demand for payment is made by Counterparty to Guarantor, such payment shall be paid to Counterparty within five (5) days following receipt of written demand therefor.

The Guarantor shall be subrogated to all of Counterparty's rights against the Companies in respect of any amounts paid by the Guarantor pursuant to the provisions of this Guaranty. Notwithstanding the foregoing, Guarantor will not exercise any rights which it may acquire by way of subrogation until all the Obligations shall have been performed in full.

No failure or delay on the part of Counterparty to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Counterparty of any right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power. Each and every right, remedy and power hereby granted to Counterparty or allowed it by law or other agreement shall be cumulative and not exclusive of any other, and may be exercised by Counterparty from time to time.

The Guarantor may not assign its rights, interest or obligations hereunder to any other person without the prior written consent of the Counterparty and any purported assignment absent such consent is void.

All notices or other communications given or required to be given hereunder shall be in writing at the addresses below either by certified mail with return receipt requested, in person, or by overnight courier service, each of which shall be effective upon receipt.

The Guarantor's address for notices is as follows:

Texas Competitive Electric Holdings Company LLC
Attention: Treasurer
1601 Bryan Street, 7th Floor
Dallas, TX 75201-3411

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The Counterparty's address for notices is as follows:

Cities Aggregation Power Project, Inc.
Attention: Geoffrey M. Gay, General Counsel
816 Congress, Suite 1900
Austin, TX 78701

Guarantor and Counterparty may change its address for notices by giving notice to the other party in accordance with the provisions stated above.

This Guaranty shall be governed by the laws of the State of Texas without regard to principles of conflicts of laws.

IN WITNESS WHEREOF, the Guarantor has caused two duly authorized representatives to execute and deliver this Guaranty.

Texas Competitive Electric Holdings Company LLC
Guarantor

By: _____
Michael T. McCall,
Executive Vice President

Reviewed

By: _____
Anthony Horton,
Attorney-In-Fact

Date

EXHIBIT 6

LEGAL OPINION PROVISIONS

With respect to each Seller, the legal opinion shall include the following:

1. Each Seller is a limited liability company duly created, organized, and validly existing under the laws of the State of Texas, and is duly qualified to carry on and conduct business in the State of Texas, with full power and authority to conduct the business now being conducted by it, and to carry out and perform its obligations under the Agreement and the Intercreditor Agreement.
2. The Agreement and the Intercreditor Agreement constitute the legal, valid and binding obligations of each Seller, enforceable against each Seller in accordance with their terms; and the Agreement has been duly authorized, executed, and delivered by each Seller.
3. Each Seller has duly authorized the taking of any and all action necessary to execute, carry out, and give effect to the Agreement and the Intercreditor Agreement and the transactions contemplated thereby.
4. The execution and delivery of the Agreement and the Intercreditor Agreement and the performance by each Seller of its obligations thereunder, do not and will not (a) violate such Seller's organizational documents, (b) constitute a default under [agreements to be agreed upon by Seller and Buyer, but shall at least include the Credit Agreement and TCEH's Senior Notes indentures] or (c) violate in any material respect any court or administrative order or decree.
5. No approval, consent or other action by any governmental authority or agency is required in connection with the Agreement, other than those which have been previously given or taken.
6. The execution and delivery of the Agreement and the Intercreditor Agreement and the performance by each Seller of its obligations thereunder, do not and will not violate any federal law, state law, rule or regulation, as applicable.

With respect to TCEH, the legal opinion shall include the following:

1. TCEH is a limited liability company duly created, organized, and validly existing under the laws of the State of Delaware, and is duly qualified to carry on and conduct business in the State of Texas, with full power and authority to conduct the business now being conducted by it, and to carry out and perform its obligations under the Guarantee and the Intercreditor Agreement.
2. The Guarantee and the Intercreditor Agreement constitute legal, valid and binding obligations of TCEH, enforceable against TCEH in accordance with their terms; and the Guarantee has been duly authorized, executed, and delivered by TCEH.

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3. TCEH has duly authorized the taking of any and all action necessary to execute, carry out, and give effect to the Guarantee and the Intercreditor Agreement and the transactions contemplated thereby.

4. The execution and delivery of the Guarantee and the Intercreditor Agreement and the performance by TCEH of its obligations thereunder, do not and will not (a) violate TCEH's organizational documents, (b) constitute a default under [agreements to be agreed upon by Seller and Buyer, but shall at least include the Credit Agreement and TCEH's Senior Notes indentures] or (c) violate in any material respect any court or administrative order or decree.

5. No approval, consent or other action by any governmental authority or agency is required in connection therewith, other than those which have been previously given or taken.

6. The execution and delivery of the Guarantee and the Intercreditor Agreement and the performance by TCEH of its obligations thereunder, do not and will not violate any federal law, state law, rule or regulation, as applicable.

INDEX OF EXHIBITS

Exhibit 1	Monthly Energy Price(s) and Expected Monthly Quantities
Exhibit 2	Reference Replacement Price(s) and Yet-to-Be Determined Delivered Quantities in the event of an Early Termination Date
Exhibit 3	Earned Portion of the Capacity Prepayment
Exhibit 4	Accession Agreement
Exhibit 5	Seller's form of Guaranty
Exhibit 6	Legal Opinion Provisions